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Witchcraft in Certain Legal and Medical Relations

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[Ed. note—Dr. Burr has recently issued in an enlarged form, the fourth edition of his valuable handbook entitled "Psychology and Mental Disease."]

FROM the beginnings of history, the imaginations of men have peopled the air with spirits, the deep with demons, and have explained startling phenomena of the material world by the assumption of unseen agencies for good and evil, dominating the lives of men, determining on the one hand the efficiency, on the other the failure, of their undertakings. Saul, under the influence of a bad spirit, obtained relief by listening to the harp of David, and one possessed of devils was healed by a miracle which brought about their transference to the bodies of swine, which fell from a steep place into the sea. Epilepsy was in olden times very generally attributed to demoniacal possession, as were also the various forms of insanity. As to epilepsy, its name implies[1] "the seizure of the patient by a superhuman agent; the agent being more exactly defined in 'nympholepsy,' the state of being seized or possessed by a nymph." In the Roman world[2] the doctrine (of an attending spirit) came to be accepted as a philosophy of human life. Each man had his *genius natalis* associated with him from birth to death, influencing his action and his fate, standing represented by its proper image as a lar among the household gods.

As to insanity, there still lurks in the minds of the uncultured the absurd belief that this is due to demoniacal possession. A venerable priest ministering to the necessities of the members of a fast disappearing tribe of Indians, in the lower St. Lawrence, told me of unique methods in vogue among them for overcoming the evil spirit "Wendigo," supposed to possess the body of one insane and eat out the souls of others. It was the aim of the Indians to lose in the woods, or otherwise dispose of, one afflicted with a mental infirmity. On one occasion the priest heard by chance of a puerperal woman suffering from mania. Approaching her cabin about which many "braves" were standing, he heard the

[1] Tylor, Primitive Culture.
[2] Ibid.

words "the *curé* is coming." The reason for the warning was soon apparent. Inside the cabin he discovered the Indian woman bound to a chair, placed back up and in a sloping position. Round her neck was a cord which extended through a chink in the rear wall of the cabin. At the other end of this cord there had been relays of Indians, who made it taut from time to time. The priest extricated the squaw from her perilous position, soothed and cared for her. Not long after, however, with the characteristic perversity of one partially appreciating the reason for the attention her neighbors had bestowed and to the end defiant, she exclaimed: "Now I will eat your hearts out."

Certain witches have been, in the popular mind, endowed with the ability to transform themselves into beasts; hence, the *werwolf* of German and the *loup-garou* of French medieval mythology. Nebuchadnezzar, King of Babylon, imagined himself changed into an animal (Lycanthropy). He consumed grass as a beast of the field, his body lay under the dews of heaven, his hair grew as the feathers and his nails as the claws of a bird.

In the opinion of the fathers of the Church, sorcery was supported by the strongest Scriptural and ecclesiastical authorities, and throughout the Middle Ages and the Renaissance period to the beginning of the eighteenth century, witchcraft was the *bête noire* of the theologian, the jurist, and the doctor of medicine. "Scepticism," writes Lowell,[3] "down to the beginning of the eighteenth century, was the exception. Undoubting and often fanatical belief was the rule." Even as late as 1815-16 Belgium was disgraced by trials of unfortunates suspected of witchcraft. In 1836 the populace of Hela, near Dantzic, twice plunged into the sea an old woman reputed to be a sorceress, and as the miserable creature persisted in rising to the surface, she was pronounced guilty and was beaten to death. In the year 1873 a trial and execution for witchcraft are said to have taken place in Mexico. The following account is clipped from a Detroit, Michigan, newspaper published in 1913:

"A young woman named Lynch, a light-skinned negress, who resides in a cottage in the suburbs of Washington, is causing a stir hereabouts, for she is suspected of being a witch. The charge comes directly from Hannah Johnson, another negress, who claims the Lynch woman cast a spell upon her, stealing her sight. The only direct evidence is merely circumstantial. The Johnson woman suddenly has gone blind. She blames the light-skinned negress for her misfortune, and has preferred charges of witchcraft, which the superstitious negroes of the community are commencing to believe."

On the establishment of the Inquisition in the thirteenth century, witchcraft was fully "recognized as falling within the province of the Church, and therefore to be punished with torture and the stake." In the laws of the New England colonies printed in 1655 (the famous Salem cases were executed in 1691 and 92) witchcraft is defined as "fellowship by covenant with a familiar spirit, to be punished with death."

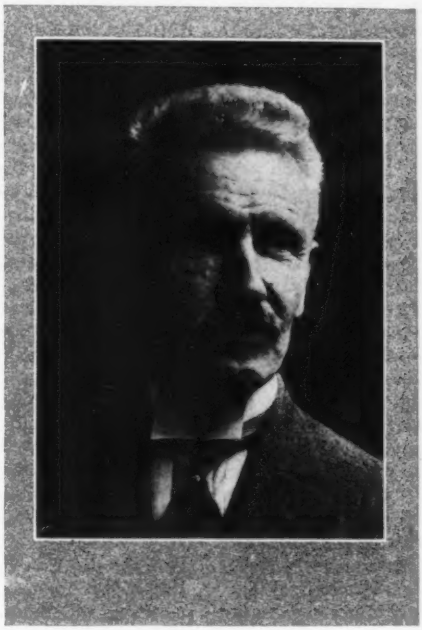
"Born into an atmosphere of belief in magic, the early Church seems never to have questioned its reality, while she greatly broadened its scope by stigmatizing as magic all the marvels of rival faiths. Her monotheism and her identification of religion with ethics led her to look on the gods of the heathen as devils and on their worship as witchcraft. Her conversion of the Germanic peoples brought in a host of fresh demons; and it is the name of the seers of this northern faith, witega, wicca, which gives us the word 'witch.'"[4] There was a distinction in medieval times between white magic, which derives its power from good and uses it beneficently, and black magic, due to the machinations of spirits of evil. Catholic and Protestant clergy seem to have been equally zealous in their persecution of witches. "They might agree," said Lowell, "in nothing else, but they were unanimous in their dread of this invisible enemy."

Legal prosecution of witches continued in Europe until the very close of the

[3] Among My Books.

[4] Geo. L. Burr, in Johnson's Cyclopedia, 1895

eighteenth century. It seems to have been reluctantly abandoned as a theory, John Wesley writing in 1768 that it was "in effect giving up the Bible." Erasmus and Luther were equally strong defenders of prosecution for witchcraft. It was classed among the "crimes of peculiar atrocity," and although there is widespread deploring of the fact that obtaining evidence as to witchcraft was difficult, the jurists seem to have been moderately successful in their efforts. Lea, in his work on Superstition and Force, which I have laid under heavy contribution in the preparation of this article, relates that "one judge in a treatise on the subject boasted of his zeal and experience in having despatched within his single district, nine hundred witches in the space of fifteen years, and another trustworthy authority relates that in the diocese of Como alone as many as a thousand had been burned in a twelve-month while the average in a year was a hundred."



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Witchcraft being so difficult of proof, torture became an unfailing resource of the puzzled tribunal. It is a case where all roads seem to lead to conviction. The application of a red-hot iron was a favorite method for the extortion of confession. An exquisite refinement of this procedure consisted in a person representing the sufferer applying his tongue to a red-hot iron nine times unless sooner burned. A burn was considered to render the guilt of the accused indubitable, and on a subsequent public trial, if the same result followed, he was bound to cure the bewitched person or to suffer death if he died.

The cold-water ordeal was performed by the lowering of the victim into a pond of water which had been exorcised with various religious rites and formulas. A rope of specified length was employed ostensibly to prevent him from drowning if the individual were guilty, and to save him from this fate if innocent, but the victim being bound with cords, the manipulation of the rope and his submergence seem to have been largely in the power of the operator. The basis of this procedure was the belief that the pure element would refuse to receive those who were tainted with crime, and that adepts in witchcraft and magic lose their specific gravity. Apparently serious writers have described witches stripped naked, hands and feet bound together, right to left, and then cast upon the river, where they floated like logs of wood.

The "ordeal by weight" was employed in the Orient by means of a delicately adjusted balance bearing a beam containing a groove in which water was placed. The weight of the patient in one scale was opposed by its equivalent in the other. If he sank or if the scales broke, conviction followed. In Europe there was a contrary deduction from similar testimony, in consequence of the belief that sorcerers became lighter than water. Another and extremely effective ordeal was that of pouring upon an alleged witch from a height, a small stream of cold water. It rarely failed to accomplish the purpose of extracting a confession, but one may not marvel over the expression of a bewildered victim of this

treatment who pitifully inquired whether one could not be a sorcerer without knowing it. Other forms of torture were the use of the rack and the strappado,—the latter, an instrument by means of which the unfortunate was suspended at the end of a rope and allowed to fall suddenly until his descent was arrested by the rope becoming taut.

"Witch prickers," who thrust long pins into the bodies of their victims, were in Great Britain efficient officers of the court. One named Kincaid was accustomed to strip his victims, bind them hand and foot, and thrust pins into different parts of their bodies until exhausted by the torture, and rendered speechless, they failed to scream, at which he would triumphantly exclaim that he had found the witch mark. A pricker of witches in Edinburgh discovered that an alleged witch had the usual mark on the left shoulder, which "enabled him to find her out by putting a large pin into it, which she never felt." Here was a thoroughly well-thought out judicial test determined by a condition of anesthesia (presumably hysterical). Having myself been one of a number of physicians interested in the investigation of an anesthetic female patient who was indifferent to the insertion of hat pins through her cheek, the muscles of the arm, and portions of the trunk, I can well understand Mr. Scober's impressions on finding Jane Barker deficient in common sensation.

The "late introduction into Scotland" of torture as a regular form of judicial investigation was evidently carried on with the proverbial enthusiasm of the eleventh-hour convert. It rivaled the "worst excesses of the Inquisition of Italy and Spain. It was carried to a pitch of frightful cruelty, which far transcended the limits assigned to it elsewhere. Thus the vigils, which we have seen consisted in keeping the accused awake for forty[5] hours by the simplest modes, in Scotland, were fearfully aggravated by a witch-bridle, a band of iron fastened around the face, with four diverging points thrust into the mouth. With this the accused was secured immovably to a wall, and cases are on record in which this insupportable torment was prolonged for five and even for nine days. In other cases an enormous weight of iron hoops and chains, amounting to twenty-five or thirty stone, would be accumulated on the body of the patient."

On the other hand, the judicial procedures of Salem were, according to Lowell,[6] compared with others of the same kind, exceptionally humane. "At a time when Baxter could tell with satisfaction of a "reading parson" eighty years old who, after being kept awake five days and nights, confessed his dealings with the devil, it is rather wonderful that no mode of torture other than mental was tried at Salem." He further says: "Though some of the accused had been terrified into confession, yet not one persevered in it, but all died protesting their innocence, and with unshaken constancy, though an acknowledgment of guilt would have saved the lives of all. This martyr proof of the efficacy of Puritanism in the character and conscience may be allowed to outweigh a great many sneers at Puritan fanaticism."

Apropos of the lamentations of the jurists of olden time respecting the difficulties in obtaining evidence as to witchcraft, Lea records "every legal safeguard was refused to the wretched criminal, and the widest latitude of evidence was allowed. Bodin expressly declares that in so fearful a crime no rules of procedure were to be observed." One unhappy mortal was convicted on the testimony of his son, aged twelve: another by that of his daughter, a child in her ninth year. In preparation for the witchcraft trials, it is probable that dependence was very frequently placed upon the testimony of those of hysteric imagination and imitativeness. Lowell writes: "One of the best things in Mr. Upham's book is the portrait of Parris, the minister of Salem village, in whose household the children who, under the assumed pos-

[5] Why forty and not forty-eight? Has this any connection with the forty days' fast, the forty years' wanderings, or the forty days of the Ark's flotation?

[6] Among My Books.

session of evil spirits, became accusers and witnesses, began their tricks. He is shown to us pedantic and something of a martinet in church discipline and ceremony, somewhat inclined to magnify his office, fond of controversy as he was skilful and rather unscrupulous in the conduct of it, and glad of any occasion to make himself prominent. Was he the unconscious agent of his own superstition, or did he take advantage of the superstition of others for purposes of his own?" "Was Parris equally sincere in inquiries and answers to questions? On the whole I think it likely that he was. But if we acquit Parris, what shall we say of the demoniacal girls? The probability seems to be that those who began in harmless deceit found themselves at length involved so deeply, that dread of shame and punishment drove them to an extremity where their only choice was between sacrificing themselves, or others to save themselves. It is not unlikely that some of the younger girls were so far carried along by imitation or imaginative sympathy as in some degree to 'credit their own lie.' . . . The marvelous is so fascinating, that nine persons in ten, if once persuaded that a thing is possible, are eager to believe it probable, and at last cunning in convincing themselves that it is proven. But it is impossible to believe that the possessed girls in this case did not know how the pins they vomited got into their mouths. Mr. Upham has shown, in the case of Anne Putnam, Jr., an hereditary tendency to hallucination, if not insanity. One of her uncles had seen the devil by broad daylight in the novel disguise of a blue boar, in which shape, as a tavern sign, he had doubtless proved more seductive than in his more ordinary transfigurations."

The narrative of Rev. Mr. Turell, of Medford, written in 1728, is quoted. "The eldest of three sisters began the game [of simulation], and found herself before long obliged to take the next in age into her confidence. By and by the youngest, finding her sisters pitied and caressed on account of their supposed sufferings, while she was neglected, began to play off the same tricks. The usual phenomena followed. They were convulsed, they fell into swoons, they were pinched and bruised, they were found in the water, on the top of a tree or of the barn. To these places they said they were conveyed through the air, and there were those who had seen them flying, which shows how strong is the impulse which prompts men to conspire with their own delusion where the marvelous is concerned. The girls did whatever they had heard or read that was common in such cases. They even accused a respectable neighbor as the cause of their torments." There were some doubters, but "the greater number believed and said they were under the evil hand or possessed by Satan. But the most interesting fact of all is supplied by the confession of the elder sister, made eight years later under the stress of remorse. Having once begun, they found returning more tedious than going on. To keep up their cheat made life a burden to them, but they could not stop. Thirty years earlier, their juggling might have proved as disastrous as that at Salem village."

The investigation in the year 1884 of a group of cases concerning which I was called, with two other physicians, to advise the authorities, revealed a singular epidemic of hysterical excitement proceeding from the insane delusions of one member of a household of fifteen representing three generations. In a squalid hut in the country these people had assembled. The fire in a stove red hot had been constantly replenished day and night. Through crevices and windows silver bullets had been fired at intervals by the distracted occupants of the cabin. They had placed forks and steel in the windows. By pricking, flagellating, and gruesome noises they had kept each other awake for a period of about seventy-two hours. They had cut small pieces from the fingers and toes of one (her of the original delusion) and promoted continuous bleeding, believing that if it ceased witch possession would ensue. Her arms and legs were excoriated from the friction administered. In hurried excursions out of the cabin (which was maintained in a state of veritable siege) they had cut off the

tails of their horses and slit the ears of their cattle. A physician summoned, I believe, by neighbors, had been attacked and wounded by a knife in the hands of one of the frantic females. A neighbor declared "They had been racing through the woods. They would shoot and then race as if in pursuit of something, with dogs barking and men screaming." One of the family related that the father was in a sinking spell. They held his watch for a few minutes, and then laid it on the child's forehead. As soon as this was done he was "scared to death" and immediately had a fit. While the watch was on the child's head the father had fits, and when the father had it in his possession the child had fits. The husband of one was suspected of being the witch. A sister advised the wife that she "take some breast milk, put it in a bottle, put five needles and five pins in it, and put it on the stove, and if there was any such thing as deviltry, it would make him sick." He came home sick that night. He was also suspected of poisoning tobacco the remains of which the family placed in the stove. After it was burned, he was taken with trembling and had to go to bed.

The entire household was imprisoned temporarily, and the insane sister, whose delusions had influenced the remaining members, as well as the one who committed the assault with the knife, was eventually placed in an institution for the insane. The maternal grandmother of these patients was an epileptic, the maternal grandfather a drunkard, the father gloomy and morose. The mother was of congenitally feeble mentality, as were all of her offspring. The insane daughter had suffered from two attacks of depression, was subsequently married, and on the birth of a child became again morbid. She was taken to this hovel which the parents occupied. There, in consequence of the sudden death from epilepsy of a niece, she developed the delusion that the household was bewitched. She had hallucinations of smell, taste, and hearing, and fancied herself suffocating. The phenomena were accepted by the others as the result of witchcraft, and the hysteric infection became general.

The ordeals of the cross and the consecrated bread seem to have been omitted in investigation of witchcraft. At all events, I have not been able to discover their use in judicial procedure in this regard; the reason possibly being that because of their deep religious significance, their employment would have been sacrilegious in this extraordinary and abominable crime.

Charms against the influence of witches were numerous. I have already referred to the shooting of bullets made from silver coins, the maiming of stock and intense heat. Another of which Big Tom Wilson, a famous bear hunter living in the Black Mountain region of North Carolina, told me, was to draw the figure of a man supposed to represent that of the inimical witch, place it upon a tree, and riddle it through the heart by rifle fire. Witches cannot exert their malign influence, according to Big Tom, unless something is given to or taken from them. The present of "a hank of yarn and some bacon" proved to be the undoing of a cousin, the ungrateful recipient "devilling" the giver's gun and rendering it useless. Big Tom couldn't reconcile the existence of witches with justice and his religious belief. "The Bible says," he declared, "by the sweat of thy face shalt thou eat bread, and it doesn't seem nat'l, God, having thus pronounced, should place in the hands of the devil the means to take away from the poor man what the sweat of his face has produced."

For the detection of witchcraft, there was employed in the sixteenth century a fragment of earth from a grave, sanctified in the mass and placed on the threshold of the church door. This was supposed to prevent egress of any witch; a similar power was attributed to a splinter of oak from a gallows, sprinkled with holy water, and hung in the church porch. The identification of witches was often committed to boys whose shoes were newly greased with lard. These were stationed at church doors, and the recognition of the luckless wretch on his emergence from the sanctuary was certain. Was this notion of the employment of lard determined by the miracle of the transference of the devils to the bodies of the swine?

C. B. Burr

Legal Status of Seers and Necromancers

BY L. ARTHUR WILDER

of the New York Bar

MAN YEARNS for knowledge of the supernatural, and deep within him lurks a vagrant belief that somewhere is a secret passage between the temporal and the eternal, whose gates will yield to the touch of a magic hand, and open unto him a vision of that blessed abode whose denizens can tell him of things that are to come. Various beings arise and offer to guide him past the invisible portal, but, when tested, they utter verbose nothings or stoop to deception by bungling legerdemain. Yet the believer persists, denouncing impostors as such, but not abating the belief that somewhere, sometime, he will encounter a guide who can penetrate beyond the barrier which hems in what is mortal of man.

Perhaps this groping for a touch of eternity is the outward manifestation of the fettered spirit trying, as one enveloped in a sort of amnestic haze, to visualize some prior estate in which it instinctively but vaguely feels it moved in times past. May it not be that the spirit, thrust into a prison of clay, and condemned to wander up and down this vale of tears and tango, labor and levity, decalogue and deviltry, looks ever aloft for a sign or word from dwellers in that far land whence it came, and, in its eagerness, tries to spell out a message from them in every unusual or untoward event?

How else shall we account for the common belief in omens? It is not hazardous to assume that mankind does commonly so believe. Let him who is without superstition cast the first stone. The awkward diner who has spilled the salt is advised by a chorus of his companions to cast a portion of the scattered crystals over his left shoulder, in order that he may nullify the evil augury which the event involves. But not always does the left shoulder stand sentry against the stealthy coming of allotted calamity; for to see across its graceful slope, the newborn crescent among its astral companions is to invite annoyances and disaster until the dying month shall see the crescent pallid and inverted. When the good housewife drops her dishcloth, or finds that some transient sprite has placed chairs back to back, she sets her house in order against the coming of guests. It is said that votaries of that great indoor sport, draw poker, are the most superstitious of men. To stay the unseen hand of frowning chance which he whimsically imagines has caused his hoard of shekels to take wings, the poker player resorts to fantastic conjury, such as walking around his chair, taking off his shoes, wearing his coat lining outward, going bareheaded, wearing a hat, borrowing tobacco, lending it, smoking it, eschewing it, placing a knife in the center of the table or any one of the hundred other things that the moment may suggest. And greatest of all the rites of superstition is the potent "knock on wood," which, alone, will appease the wrath of Dame Fortune at him who boasts of her gracious visitations.

A consciousness of these and a thousand other fantasies that coexist with what is glibly termed our twentieth century erudition should make us look back a little more indulgently upon the colonial New Englander who believed himself to be constantly beset by witches. Shall she who spells bad fortune from the black cat which crosses her path be heard to deride the Salem matron who

was wont to plunge a hot horseshoe into her churn to frighten away witches? Or shall he who shrinks from passing beneath a ladder find no sympathy in his heart for him who believed in the efficacy of silver bullets to kill witches? No, the superstition of to-day should not, to that extent, laugh at the fetich of yesterday.

But it may and does point the finger of shame at the centuries of persecution for witchcraft, marked by barbarous ordeals and the concerted slaughter of numberless innocent persons. Doctor Sprenger, in his "Life of Mohammed," estimates that nine million persons were burned as witches during the Christian epoch. That such wholesale atrocities were committed in God's name, by reason of conceptions attending the spread of Christianity, renders them the more deplorable.

Before the introduction of the idea of an evil spirit,—the source of all wickedness, the prince of darkness, and the common enemy of God and man,—witches were regarded as, not unlike Hecate, capable of both good and evil. But with the spread of such a doctrine of dualism, the art of magic which had come down through the ages became diabolized, the theory being that all supernatural powers not emanating from the true God were attributes of the Devil, and that God exercised his powers solely through the Church. *Ergo,* all persons not of the cloth, who claimed, or were said, to commune with the supernatural, were in league with the Devil. Such, broadly stated, was the theory which, fostered first by the Catholic clergy and later but no less zealously by the Protestant, was taken up by a frenzied and benighted people for four centuries.

The common notions of the powers and rites of witches were many and varied, and have been made more or less familiar to us through the volumes upon volumes devoted to the subject. The limits of the present discussion forbid anything more than the bare repetition of a few, such as the notion that woman, because of her supposed part of the tragedy of Eden, was particularly suited to be a tool of the Devil; and the idea that the Devil tempted her as a wooer, with whom she made a contract signed with her own blood; confirmed by her rebaptism, whose formula required her to trample upon the cross, and renounce God and Christ (and, among Catholics, the Virgin Mary) in forms parodying the renunciation of the Devil in the formula of Christian baptism; recorded by a mark impressed upon her body which remained forever insensible; and consummated in a carnal fashion. In the same strain, but carried to more absurd extremes, was the belief in Witches' Sabbaths, to which reference will be made later.

Before ecclesiastics arrogated to themselves the functions of "white magic," and thus placed sorcery and the like in the category of heresy, the penalties prescribed for witches applied only to those who had done or were believed to have done positive injury to another. The Twelve Tables went no further than this in denouncing him who should bewitch the fruits of the earth, or conjure away his neighbor's corn into his own field; and it has been said that the Mosaic law, in directing that no witch should be permitted to live, was probably aimed only against evil doers. Constantine, while directing that the author of evil charms be executed, saved harmless those who ministered for good.[1]

But when an insistent clergy had succeeded in kindling the witchcraft fires whose smoke so long beclouded the atmosphere of so-called civilization, no agents of the supernatural were accounted good, save the holy ministers of God's magic, and the unordained were put to death. At first the executions were more or less sporadic, but persecutions became organized and relentless following the celebrated "Summis Desiderantes" of Innocent VIII., which gave full papal sanction to the prevalent notions of sorcery, and ordered that all exponents of the diabolical art be discovered and put to death; and the famous Malleus Maleficarum for Germany, in which the whole doctrine of witchcraft was systematized, a regular form of trial laid down, and a course of examination prescribed to enable the inquisitors to detect the guilty. Under this code of procedure, strengthened by later papal bulls, no man was

[1] Code Justin. Bk. 9, title 18.

safe. Accusation meant execution, for between the two neither reason, justice, nor mercy intervened. As has been said, witchcraft was a convenient crime to fasten upon persons who had been guilty of no other. The horrors that ensued could not even be indexed in a discussion so brief as this.

In England, legislation began as early as the preconquest period. At common law, witchcraft was an offense though not a felony, "because no external act of violence was offered whereof the common law can take notice, and secret things belong to God."[2] Trials[3] in England for witchcraft, which Blackstone[4] characterizes as one of the offenses against God and religion, seem to have been relatively fewer, and generally not accompanied with the cruel details which obtained in Germany, where witchcraft and torture are said to have been inseparable. This situation in England has been ascribed partly to the fact that there was no Malleus Maleficarum in England, and partly to the fact that torture was not regarded as properly a part of criminal procedure, though it was the stock in trade of the witch finders, particularly Matthew Hopkins. History has it that he, with assistants, went from town to town exacting from each a certain fee upon his promise to bring suspected persons to confession and the stake, by methods which are a matter of record and may be repeated here to refresh the reader's memory; he stripped them naked, shaved them, thrust pins into their bodies to discover the witches' marks; he wrapped them in sheets, with the great toes and thumbs tied together, and dragged them through ponds or rivers, when, if they sank, it was a sign that the baptismal element did not reject them, and they were exonerated; but if they floated (as they usually did for a time) they were adjudged guilty. He anticipated our merciful and enlightened "third degree" by some two hundred and fifty years, when he kept accused persons fasting and awake, and sometimes incessantly walking, from twenty-four to forty-eight hours at a time to induce confession. If one accused could not shed tears at command, or if she hesitated at a single word in repeating the Lord's Prayer, she was a witch. A particularly interesting description of a trial for witchcraft in colonial New Jersey is contained in a letter written in 1730 apparently by an eyewitness.[5] It is interesting not only for its description of a trial

[2] 1 Hale, P. C. 429.

[3] For an example of English trials, reference may be had to 6 How. St. Tr. 647, presenting a private record of the celebrated trial of Suffolk witches, in which Sir Matthew Hale presided and condemned two women, and Sir Thomas Browne is said to have testified that he believed the children were bewitched as claimed, supporting his statement by extended arguments, both theological and metaphysical. Together with this record is published extended references to other trials, principally in New England.

[4] He says in 4 Bl. Com. 60: "A sixth species of offense against God and religion, of which our ancient books are full, is a crime of which one knows not well what account to give. I mean the offense of witchcraft, conjuration, enchantment, or sorcery. To deny the possibility, nay, actual existence, of witchcraft and sorcery, is at once flatly to contradict the revealed word of God, in various passages both of the Old and New Testament; and the thing itself is a truth to which every nation in the world hath in its turn borne testimony, either by examples seemingly well attested or by prohibitory laws; which at least suppose the possibility of commerce with evil spirits. The civil law punishes with death not only the sorcerers themselves, but also those who consult them, imitating in the former the express law of God [Exod. XXII. 18], 'Thou shalt not suffer a witch to live.' And our own laws, both before and since the conquest, have been equally penal; ranking this crime in the same class with heresy, and condemning both to the flames [3 Inst. 44]. The President Montesquieu [Sp. L. b. XII. c. 4] ranks them also both together, but with a very different view; laying it down as an important maxim that we ought to be very circumspect in the prosecution of magic and heresy; because the most unexceptional conduct, the purest morals, and the constant practice of every duty in life, are not a sufficient security against the suspicion of crimes like these. And indeed the ridiculous stories that are generally told, and the many impostures and delusions that have been discovered in all ages, are enough to demolish all faith in such a dubious crime; if the contrary evidence were not also extremely strong. Wherefore it seems to be the most eligible way to conclude, with an ingenious writer of our own [Mr. Addison, Spect. No. 117] that in general there has been such a thing as witchcraft; though one cannot give credit to any particular modern instance of it."

by weight and water, but as showing the absurd lengths to which the frenzied belief went. The unsuspected persons in that instance were accused of making their neighbor's sheep dance in an uncommon manner, and with causing hogs to speak and sing Psalms; not like Calypso, nymph of the braided tresses, who forsook her shuttle of gold, and set ambrosia and nectar before Hermes when he came to antagonize her by demanding the release of Odysseus, but more like Circe, and Comus whom she bore to Bacchus, and who

"Excels his mother at her mighty art"

of preparing a charmed cup whose potion changed the countenance of him who drank,

"Into some brutish form of wolf or bear
Or ounce or tiger, hog or bearded goat,
All other parts remaining as they were."

It is not strange that words imputing witchcraft to another were regarded as actionable so long as the frenzy continued unabated; for such words implied not only the acts popularly supposed to attend the witches' compact with the Devil, but also participation in Witches' Sabbaths,[6] which may fairly be regarded as the extreme absurdity of the whole delusion. An early case[7] held the words, "Thou art a witch and a sorcerer," actionable *per se* in view of the fact that by statute[8] it was a felony to bewitch a person. And it is held in a modern case that while a charge of witchcraft is no

[5] This paper, reproduced in 17 N. J. L. J. 171, is as follows:

(West New Jersey)
Burlington, October 12, 1730.

Saturday last, at Mount Holly, about 8 Miles from this Place, near 300 People were gathered together to see an Experiment or two tried on some Person accused of Witchcraft. It seems the Accused had been charged with making their Neighbours' Sheep dance in an uncommon Manner, and with causing Hogs to speak and sing Psalms, &c., to the great Terror and Amazement of the King's good and peaceable Subjects of this Province. . . . The said Accused desirous to make their Innocence appear voluntarily offered to undergo the said Trials if 2 of the most violent of their Accusers would be tried with them. . . . The Accusers were 1 man and 1 woman, and the Accused the same. . . . A grand Consultation was held, before they proceeded to trial; in which it was agreed to use the Scales first; and a Committee of Men were appointed to search the men, and a Committee of Women to search the Women, to see if they had any Thing of Weight about them particularly Pins. After the Scrutiny was over, a huge great Bible belonging to the Justice of the Peace was provided, and a Lane through the Populace was made from the Justice's House to the Scales, which were fixed on a Gallows erected for that Purpose, opposite to the house, that the Justice's Wife and the rest of the Ladies might see the trial, without coming amongst the Mob; and after the Manner of Moorfields, a large Ring was also made. Then came out of the House a grave, tall Man carrying the Holy Writ, before the supposed Wizard, &c., (as solemnly as the Sword bearer of London, before the Lord Mayor). The wizard was first put into the Scale, and over him was read a Chapter out of the Book of Moses, and then the Bible was put in the other Scale (which being kept down before), was immediately let go; but to the great Surprise of the Spectators, Flesh and Bones came down plump, and out weighed that great good Book by abundance. After the same Manner, the others were served and their Lumps of mortality severally were too heavy for Moses and all the Prophets and Apostles. This being over, the Accusers and the Mob, not satisfied with this Experiment would have the Trial by Water: accordingly a most solemn Procession was made to the Mill-pond; where both Accused and Accusers being stripped (saving only to the Women their Shifts), were bound Hand and Foot and severally placed in the Water, lengthways, from the Side of a Barge or Flat; having for Security only a rope about the Middle of each, which was held by some in the Flat. The Accused Man being thin and spare, with some Difficulty began to sink at last; but the rest, every one of them swam very light upon the Water. A Sailor in the Flat jumped out upon the Back of the Man accused, thinking to drive him down to the Bottom; but the Person bound, without any Help came up some time before the other. The Woman Accuser, being told that she did not sink, would be duck'd a second Time; when she swam as light as before. Upon which she declared, That she believed the Accused had bewitched her to make her so light, and that she would be ducked a Hundred Times; but she would duck the Devil out of her. The accused Man being surpris'd at his own Swimming, was not so confident of his Innocence as before, but said *If I am a Witch, it is more than I Know.* The more thinking Part of the Spectators were of Opinion that any Person so bound and plac'd in the Water (unless they were mere Skin and Bone) would swim till their Breath was gone, and their lungs fill'd with Water. But it being the general Belief of the Populace that the Women's Shifts, and the Garters with which they were bound help'd to support them; it is said they are to be tried again the next warm Weather naked.

[6] It was thought that stated meetings (Witches' Sabbaths) occurred between witches and devils. According to the accepted notion, the witch, anointing her feet and shoul-

longer libelous *per se*, the jury may find it libelous when published in a community whose members believe in witchcraft to some extent, concerning a woman whose livelihood depends upon the respect and goodwill of members of the community.[6]

Such a recent instance serves as a reminder that a vestige of this terrible nightmare remains. And our modern so-styled seers, especially spiritualistic mediums, cannot be dissociated from that peculiar turn of the human mind which made witchcraft possible, and which, like

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ders with a salve made of the fat of murdered and unbaptized children, mounted a broomstick, distaff, rake, or the like, and, making her exit by the chimney, rode through the air to the place of meeting. If her own particular demon lover came to fetch her, he sat on the staff before, and she behind him; or he came in the shape of a goat and carried her off on his back. At the place of assembly, the archdevil in the form of a large goat, with a black human countenance, sat on a high chair, and the witches and demons paid homage by kneeling to him, and kissing his posteriors. The feast was lighted up with torches, all kindled at a light burning between the horns of the great goat. Among the viands there was no bread or salt: and they drank out of ox hoofs and horses' skulls, but the meal neither satisfied the appetite nor nourished. After eating and drinking, they danced to music played on a bagpipe, with a horse's head for the bag and a cat's tail for a chanter. In dancing they turned their backs toward one another. In the intervals, they narrated to one another what mischief they had done, and planned more. The revel concluded with obscene debauchery; after which, the great goat burned himself to ashes, which were divided among the witches, with which to raise storms. They returned as they came; and the husband was kept from being aware of the wife's absence by a stick being laid in the bed, which he mistook for her.

Note.—This matter is taken from a reprint of Chambers's Encyclopedia, to which the writer acknowledges indebtedness for other references.

[7] Rogers v. Gravat, Cro. Eliz. pt. 2, p. 571.

The following complaint from colonial New Jersey may be found interesting:

"Midd SS. Abigail Sharp Complains of Abraham Shotwell in Custody for that whereas the Said Abigail is a good true faithful & honest Subject of our Lord The King now & hath been of Good name fame Conversation & Condition & as Such as well among her neighbours as other faithfull Subjects of our Said Lord the King always hitherto hath been Esteemed Called & Reputed & Soberly modestly & Religiously from the time of her nativity hitherto hath always Lived without any Scandall or Suspicion of felony witchcraft Inchantment or Diabolical Conversation with wicked & unclean Spirits or any other hurtfull or unlawfull Crime whatsoever Nevertheless the aforesaid Abraham not Ignorant of the promises but Contriving & Malitiously intending the Same Abigail unjustly to Injure & her Good name fame & Reputation to hurt Detract from & Damage & to Cause her to Suffer and undergo the Pains & Penalties by the Laws of England & of this Province upon those that are Guilty of Witch Craft & have Commerce & familiarity with unclean & wicked Spirits ordained to be inflicted the Same Abraham on the Last Day of March in the Year of our Lord one thousand Seven hundred & twenty Seven at Woodbridge within the County of Middlesex aforesaid in the Presense & hearing of many of the faithfull Subjects of our Lord the King now Falsly & Maliciously openly & publickly Spoke uttered & Spread abroad of the Same Abigail these false feignd & Defamatory English words following namely Nab Sharp (meaning the Said Abigail) is an old witch & had been flying all night & that he Saw her (meaning the Said Abigail) as he was Coming home early in the morning and She was Just Lighted in a Patch of Beans & also that the Said Abraham of his Further malice against the Same Abigail Shown & the Same Abigail further to blacken Scandalize & hurt in the manner aforesaid afterwards to wit on the Day & Year & at a Place aforesaid in the Presense & hearing of many of the faithful Subjects of our Said Lord the King now Falsly maliciously openly & publickly Spoke uttered Spread abroad & with a Loud voice Published of the Same Abigail these other false feigned Scandalous & Defamatory English words following namely Abigail is a witch & that he heard a Noise on the top of his house & he Saw her meaning the Said Abigail in the Shape of a Cat and also that the Said Abraham of his further malice against the Said Abigail Shown & the Same Abigail further to blacken Scandalize & hurt in the manner aforesaid afterwards to wit on the Day year & at the Place aforesaid in the Presence & hearing of many of the faithfull Subjects of our Said Lord the King now falsly & maliciously openly & publickly Spoke uttered Spread abroad & with a Loud Voice published of the Same Abigail these other false feignd Scandalous & Defamatory English words following namely Nab Sharp that old witch (meaning the said Abigail) bewitched that horse that Lies Dead in my field She (meaning the Said Abigail) brought him there Just now all mealy from the mill. By Reason of the Speaking uttering Spreading abroad & publishing of which Several false feignd Scandalous & Defamatory English words the Same Abigail not only in her good name fame Credit & Reputation which She heretofore had is greatly hurt and worsted but hath been put in Danger of Being indicted of felony & witchcraft & is Drawn into So great hatred and infamy that all the people of this Province Do Refuse to have Commerce & Society with her & in Getting of her Lively hood & Doing of her Business She is many ways hurt.

it, are the offspring of that ensnaring jade superstition. Many of the forms of divination are mentioned by Thomas Hobbes in his "Man." He says that men have been made to believe that they should find their fortunes, "sometimes in the ambiguous or senseless answers of the priests Delphi, Delos, and Ammon, and other famous oracles . . .; sometimes in the leaves of the Sibyls . . .; sometimes in the insignificant speeches of madmen supposed to be possessed of a divine spirit, which possession they called enthusiasm, and whose kind of foretelling events was called theomancy or prophecy; sometimes in the aspect of the stars and their nativities, which was called horoscopy, and esteemed a part of the judiciary astrology; sometimes in their own hopes or fears, called thumonancy or presage; sometimes in the prediction of witches, which is called necromancy, conjuring, or witchcraft, and is but juggling and confederate knavery; sometimes in the casual flight or feeding of birds, called augury; sometimes in entrails of a sacrificed beast, which was 'aruspicina;' sometimes in dreams; sometimes in the croaking of ravens or the chattering of birds; sometimes in the lineaments of the face, which was called metoposcopy; or by palmistry in the lines of the hand; in casual words called 'omina;' sometimes in monsters or unusual accidents, as eclipses, comets, rare meteors, earthquakes, inundations, uncouth birds, and the like, which they called 'portenta' and 'ostenta,' because they thought them to portend or foreshow some great calamity to come; sometimes in mere lottery, as cross and pile, counting holes in a sieve, dipping of verses in Homer and Virgil, and innumerable other such vain conceits."

Legislative intervention to prevent the use of any of these formulæ for purposes of gain have left only more venturesome and less clever fortune tellers in the field. The modern acts denouncing fortune telling and the like have their foundation in the ancient English "Statutes Against the Egyptians," of which the first was that of 22 Hen. VIII. chap. 10.[10] This

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"Wherefore the Said Abigail Saith that She is worsted & hath Damage to five hundred pounds & thereof She bringeth this Suite.

"Wm. Smith p. quor Pleg.

"Midd SS Abigail Sharp puts in her place Williams Smith her Attorney against Abraham Shotwell in a plea of Trespass upon the Case."

This complaint is taken from 17 N. J. L. J. 170.

[8] The statutes against witchcraft began with 33 Hen. VIII. chap. 8. This was followed by 1 Edw. VI. chap. 12, 5 Eliz. chap. 16, and 1 Jac. I. chap. 12. But when the frenzy began to subside Parliament repealed the acts against witchcraft as such, and provided punishment only for pretending to exercise witchcraft. See 9 Geo. II. chap. 5, declaring that no person should thereafter be prosecuted for conjuration, witchcraft, sorcery, or enchantment, but providing that any person pretending to use witchcraft, tell fortunes, or discover stolen property by skill in any occult or crafty science, should be imprisoned for a year, etc.

As an example of the early statutes against witchcraft, that of Mary Stuart is reproduced here because of its phraseology. It follows:

"For-sa-meikle as the Queenis Majestie and the three Estaites in this present Parliament, being informed that the heavie and abhominable superstition used by diverse of the lieges of this Realme, be using of Witchcrafttes, Sorcerie and Necromancie, and credence given thereto in times bygane, against the Law of God, And for avoyding and away-putting of all sik vaine superstition in times to-cum, It is statute and ordained be the Queeneis Majestie, and the three Estaites aforesaidis that na maner of person nor persones, of quhatsum-ever Estaite, degree, or condition they be of, take upon hand in onie times hereafter, to use onie maner of *Witchcraftes, Sorcerie, or Necromancie,* nor given themselves furth to have onie sik craft or knawledge thereof, theirthrow abusand the people: Nor that na persoun seik onie helpe, response, or consultation at onie sik users or abusers foresaidis of *Witchcraftes, Sorcerie or Necromancie,* under the paine of death, alsweil to be execute against the user, abuser, as the seiker or the response or consultation. And this to be put to execution be the Justice, Schireffs, Stewards, Baillies, Lordes of Regalities and Royalties, their Deputes, and uthers ordinat Judges competent within this Realme, with all rigour, having power to execute the samin." Ninth Parliament, IV., June, 1563.

[9] Oles v. Pittsburg Times, 2 Pa. Super. Ct. 130, involving a newspaper article which stated that a boy was possessed of devils and rendered sick by contact with an old woman who was believed by the child's parents to be a witch.

[10] This act recited that "afore this tyme dyverse and many outlandysshe People, callynge them selfes Egyptians, usying no crafte nor faicte of marchaundyse, have comen into this Realme and gone from Shire to Shire and Place to Place in greate Company, and used greate subtyll and crafty meanes to decoye the people berying them in hande, that they by palmestre could tell menne and womens fortunes, and so many times, by crafte and subtyltie, have deceyved the people of theyr

was followed by repealing and modifying acts[11] which imposed severe penalties, until 5 Geo. IV. chap. 83, § 4, which appears to be the last act of Parliament on the subject. It provides that any person pretending or professing to tell fortunes, or using any subtle craft, means, or device, by palmistry or otherwise, to deceive or impose upon his Majesty's subjects, shall be deemed a rogue or vagabond.

While under this act an intent to deceive was necessary to a conviction, an intent was implied in the words "pretending or professing,"[12] and therefore an information alleging that the defendant did pretend or profess to tell fortunes was sufficient allegation of intent.[13] In convicting one who had advertised to tell fortunes by astrology, Denman, J., said: "It is absurd to suggest that this man could have believed in his ability to predict the fortunes of another by knowing the hour, place of his birth, and the aspect of the stars at the time."[14] "Astrologers" are no more highly regarded in the American court, which recently held that fortune telling may be prohibited by the legislature even though it is based upon astrology, which is a science; and that the fact that the casting of horoscopes is part of the religious belief of numbers of the astrological societies does not prevent the legislature from forbidding such practice.[15]

Similarly, an act concerning disorderly persons, declaring "all persons who shall use, or pretend to use, or have skill in, physiognomy, palmistry, or like crafty science," to be disorderly persons, was upheld in a New Jersey decision,[16] wherein the court said that at present there is no rational evidence that palmistry is a real science, and not a "crafty science."

Subtle though the judicial mind may be, it has no place for spirit mediumship. The Michigan supreme court once had occasion to consider the case of one who advertised himself as "a modern day seer," "clairvoyant trance medium," and "clairvoyant physician," "thoroughly conversant with the occult sciences," permitting "a peep through the keyhole of the mysterious future," and offering advice "with a strange certainty" on all business affairs and affairs of the heart, "restoring lost affections, peace, and confidence to lovers and discordant families," "on a positive guaranty," locating lost, stolen, and buried property and treasures, and calling his business "pyschometry or soul reading," or "prognosticating." The court held that he was properly convicted of being a disorderly person, and further that no intent was involved, since the offense itself was a misdemeanor, and either specific acts or advertisement itself constituted the offense.[17] A like attitude is taken in New York,[18] Dela-

money." No punishment was imposed but all "gypsies" were ordered to depart the realm.

[11] See 1 & 2 Phil. & M. chap. 4; 5 Eliz. chap. 20; 7 Geo. II. chap. 502; 3 Geo. IV. chap. 40, § 3.

[12] Monck v. Hilton, L. R. 2 Exch. Div. 268. Mention is made in 47 Canadian Law Journal, 740, of a case in which one was charged with "pretending or professing to tell fortunes by palmistry, with intent to deceive;" and in which it was held that proof of intent was unnecessary, as palmistry imposed deception.

And it is held in another Canadian case that the word "undertaking" implies an assertion of the power to perform, and therefore that one undertaking to tell fortunes is asserting the possession of a power which he does not possess, and is thereby practising deception; and that when this assertion of power is used by him with intent to delude and defraud others the offense is complete. Rex v. Marcott, 4 Can. Crim. Cas. 437, 2 Ont. L. Rep. 105.

[13] Ex parte Jones [1899] 1 Q. B. 846.

[14] Penny v. Hanson, L. R. 18 Q. B. Div. 478, 16 Cox. C. C. 173, involving the act of 5 Geo. IV. chap. 83, § 4.

[15] State v. Neitzel, 69 Wash. 567, 43 L.R.A. (N.S.) 203, 125 Pac. 939, Ann. Cas. 1914A, 899.

[16] State v. Kenilworth, 69 N. J. L. 114, 54 Atl. 244, 12 Am. Crim. Rep. 535.

[17] People v. Elmer, 109 Mich. 493, 67 N. W. 550.

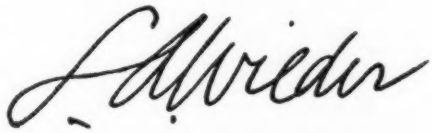
[18] Persons who profess to be able to read the mind, and who give entertainments consisting chiefly of fortune telling, are engaged in deceiving the public, and are disorderly persons within the meaning of § 899, Code Crim. Proc. and in such a business that they can get no property rights in a name or appellation which a court of equity will protect; the pretense of occult powers, and the ability to answer confidential questions with spiritual aid, are as bad as fortune telling, and are a species of it, and are a fraud upon the public. Fay v. Lambourne, 124 App. Div. 245, 108 N. Y. Supp. 874, affirmed without opinion in 196 N. Y. 575, 90 N. E. 1158.

ware,[19] and England;[20] and there is a record of a conviction in France of an impostor who claimed the power not merely to materialize a spirit, but to photograph it.[21]

It seems that in order to fall within the statute denouncing the use of the United States mails by "a scheme to defraud," the scheme must involve something more than absurd claims which could not appeal to a rational being.[22] "Such a scheme," says the court, "manifestly must involve something in the nature of a plausible device,—some such device as, in itself, is reasonably adapted to deceive persons of ordinary comprehension and prudence. A manifest hoax and humbug, like a proposition to take a person on a flying trip to the moon, to fit out a traveler for a submarine voyage to China, or any other scheme which belies the known and generally recognized laws of nature, cannot, in the nature of things, deceive any rational being. I regard the scheme set out in this indictment as one of this class. . . . Because there is no scheme set out in the indictment reasonably adapted to deceive persons of ordinary prudence, I am of the opinion there is no scheme to defraud, within the meaning of the statute in question."

So long as man clings to his superstitions and whims, the self-constituted ministers of the occult will practise their subtle crafts. Legislatures may regulate, but they cannot relegate; courts may condemn, but they cannot convert. Though decried in mart and temple,—still, plying their arts in dark recesses, palmists prosper, mediums minister, and astrologers abide. Prescribed forms of punishment have been unavailing against them, and there remains but the untried expedient of Dante's imagination, wherein each denizen of Hell who had been a seer

"'. . . wondrously seemed to be reversed
at the neck-bone, . . .
The breast his shoulders; and who once too far
Before him wished to see: now backward looks
And treads reverse his path.'"



[19] In State v. Durham, 5 Penn. (Del.) 105, 58 Atl. 1024, the defendant was found guilty of the statutory offense of pretending to exercise the art of dealing with spirits, in that he, claiming that an afflicted woman was under the influence of an evil spirit, represented that he could "take it off her and put it back on to the one who put it on her." In other words, he claimed that he could cure her, which he unsuccessfully undertook to do, receiving money for his effort.

[20] Monck v. Hilton, L. R. 2 Exch. Div. 268, held that the words "palmistry or otherwise" in the statute of 5 Geo. IV. chap. 83, were broad enough to include spiritualism; and that an impostor claiming power to materialize spirits, and obtain from them messages and manifestations, was properly convicted as a rogue and vagabond. It was sought to invoke the doctrine of *ejusdem generis*, but the court held it inapplicable.

[21] A rather detailed presentation of this case will be found in 12 Albany Law Journal, 218, from which it appears that one Buguet, calling himself a spirit photographer, represented that he could conjure up and photograph dead relatives or friends, if the customer willed hard enough, usually for the sum of 20 francs apiece. When customers arrived, the cashier would adroitly engage them in conversation and generally contrive to obtain indications of the physiognomy of the person whose spirit photograph was sought. Then from a spirit box containing hundreds of photos of men and women and children, a head was selected, placed upon a doll, and a hasty photograph made, the impostor protecting himself by the statement that the likeness depended upon the strength of the customer's will, and that sometimes when one spirit was called another would come. Often dupes believed they saw portraits of relatives or friends, sometimes bursting into tears and falling on their knees. The defendant was convicted and sentenced; and, notwithstanding the exposure of the fraud in open court, a host of respectable witnesses, including a Russian marquis, a United States minister at Madrid and two French colonels, testified that they had seen unmistakable photographs of deceased relatives and friends.

[22] United States v. Fay, 83 Fed. 839, involving a scheme to impose upon the credulous by a pretense of some mysterious superhuman power to locate hidden treasures, an offer having been made to disclose treasures upon the prosecutor's farm for $50.

Law and Apparitions

BY WILLIAM WHITE ACKERLY

of the Virginia Bar

MOST wonderful thing is the law. In its eyes all men are created free and equal. It is the comforter of the sorrowing, the defender of the weak, the advocate of the just, the custodian of the vicious, and the friend of all. It cometh from "the time whereof the memory of man runneth not to the contrary," and endeth when and where we know not. Standing giant-like in the present, it reaches its titanic arms back into the dim, distant ages of the past, and forward into the dark and mysterious realm of the future. Placed between two eternities, it considers each, and the isthmus between. It provides for the unborn child. It regulates one's every action and attends his every need in life. It waits upon his deathbed, and goes with his body to the grave, or to be burned. And still unsatisfied, and unwearied by all this, it goes further and takes cognizance of those vague and shadowy intangibilities, commonly known, for the want of a better knowledge, perhaps, as ghosts or apparitions,—those filmy, evanescent, supernatural beings believed by many to be the spirits of the departed plying between this world and the unknown one beyond the grave. Verily, I say, the law is the most comprehensive science known to man.

Considering, however, the superstitious propensities of mortal beings, for whose sole benefit the law exists, it is not unnatural that a few, at least, of the many strange, and ofttimes weird legends that have been told concerning things supernatural, have been so closely associated with the law and things pertaining thereto, as to make the cases involving them of general interest, and entitled to perpetuation as an important part of the quaint and curious in jurisprudence. And while the paucity of these cases, as indicated by the sources of research available, is indeed surprising, still more so, it seems, is the apparent adverseness of these inexplicable messengers of the spirit world to entering their appearance in the temporal courts of man in person. For, if there is really anything to them, why should they not come forward most willingly and establish themselves of record, and forever put at rest our doubts and fears, and solve that great mystery that has haunted the mind of man from the beginning of time? A maxixe upon the top of the learned judge's desk, or a good sound rap upon some sleeping juror's pate, in full view of the court, would suffice. Yet, they deny us even this.

Perhaps, it is because the atmosphere of our courts, so often surcharged with extended and heated arguments of oververbose attorneys, is inimical to the subtle fluid of which phantoms are composed. Or, it may be that these sensitive essences, oppressed with the absurdities of forensic manners and the slowness of our judicial machinery, take fright at the first sound of the high sheriff's, "Oh, yes." An objection to being sworn in that impressive manner so familiar in courts of justice may have something to do with it. The prospect of a cross-examination by a sceptical person with briefs and authorities, whose incredulity goes the length of doubting one's very existence, and whose questions, in any case, must look one's substance through and through, may be sufficiently alarming. But, be the reasons what they may, the fact none the less remains, that these ghostly films have as yet most consistently denied us autoptic proference of themselves.

So long as the proceedings have retained an extrajudicial character, no ambitious young attorney still in his starvation period could devote his time and abilities more zealously to the getting up of a case than has our unfeed film, the

ghost. Not content with fulfilling the office of detective, the indefatigable phantom has suggested needful testimony, indicated lines of prosecution, collected witnesses, and—all being ready—marched, so to speak, up to the very door of the judgment hall, there, for one of the reasons above stated, or for some other, to invariably come to a stand.

Of course, there is the legend in "Hibernian Tales"—the chap-book quoted by Thackeray in his "Irish Sketch Book"—of how when the judge asked the ghost to give his own evidence, "instantly there came a dreadful rumbling noise into court: 'Here am I, that was murdered by the prisoner at the bar.'" But the "Hibernian Tales" are of no legal authority. And real live human ghosts, like those in Ghost v. Hill, 11 Neb. 472, 9 N. W. 642, and Ghost v. Shuman, 4 Colo. App. 88, 34 Pac. 733, do not count. Nor is it the purpose of this article to consider cases in which phantoms, bred of remorse, have driven the guilty to confess, as in the anecdote of the prisoner who was about to escape from a charge of murder, when the court observed him looking suspiciously over his shoulder. "Is there no one present," the learned judge asked in general, "who can give better testimony?" "My lord," exclaimed the prisoner, "that wound he shows in his chest is twice as big as the one I gave him." In this case the prisoner was clearly suffering from an hallucination, as the judge detected.

Naturally this will o' the wisp attitude of the ghost toward the law, and coquetting with the forms of legal procedure, have not been placidly endured. It is not surprising, therefore, that a tacit understanding has been arrived at to eliminate the accusing shade altogether. If, as has been said, flesh and blood, that can speak well up to the jury and stand bullying, cannot convict a man, shall a skulking shadow have that power? No. So, the ghost's word—appraised by the Prince of Denmark at a "thousand pound"—is now, in the eye of the law, literally not worth one dump. However, without in the least challenging the wisdom of this outlawing of the ghost, it is interesting to trace the manner in which, within the years that lie behind, supernatural interference has apparently contributed to the ends of justice.

Some years ago in England a curious instance of what, in Scotland, would be termed second sight, occurred, and though suppressed at the trial, was attested upon oath, it seems, at the preceding inquest. The wife of a market gardener, known from his fine appearance as "Noble Eden," was ironing at a dresser by the kitchen window, when she saw her husband run swiftly past, pursued by another man brandishing a stone hammer, as if threatening to strike. Aware that it was a spectral illusion, but disturbed by the idea that some evil had befallen her husband, who had gone to work in the fields a long distance from his dwelling, Mrs. Eden caused instant search to be made at the spot to which he had intended to proceed. There his body was discovered, cold and stiff in death,—and close by was the murderous weapon, a stone hammer.

Another example of this kind of warning attracted considerable attention in the "burking" times at Edinburgh,—the voice of one of the victims, recognized under circumstances wholly irreconcilable with any known law of nature, having led to the suspecting, and thence to the conviction, of the assassins.

In 1680 an unfortunate girl named Anne Walker, who was about to give birth to a child by a kinsman of the same family name, was taken late one evening by him and one Mark Sharp to Dame Care, in Chester le street, London. Fourteen days later, in the wee, small hours of the night, Graeme, a fuller, living 6 miles from Walker's village, saw a woman disheveled and bloodstained, with five wounds in her head, standing in a room in his mill. She informed him that she was Anne Walker, deceased; that Mark Sharp had murdered her with a collier's pick, throwing her body into a coal pit, and hiding the pick under the bank. Favored with several such visitations, poor Graeme told his story to a magistrate. The body and pickax were discovered; and Walker and Sharp were arrested and tried at Durham in August, 1681. Sharp, it appears, was not too keen for the ghost, and his boots, covered with blood, were found where the

ghost said he had concealed them "in a stream." (How like the hands of our Lady Macbeth must have been these boots!) Against Walker there was no direct evidence, but both prisoners, however, the judge summing up against them, were found guilty and hanged, protesting their innocence.

Perhaps Graeme himself was the murderer, else how did he know so much about the affair? But Walker and his Sharp friend were seen last with the woman, and the former was not without a motive, while, at this late day, it is impossible to conjecture one in the case of Graeme.

General Cockburn's "Voyage up the Mediterranean," ii, 335 (London, 1815), is authority for a very odd trial in the court of King's bench (1687–88). In this case the logs of three ships, under Captains Barnaby, Bristow, and Brown, were put in evidence to prove that on Friday, May 15, 1687, these men, with many others, were shooting rabbits on Stromboli; that when beaters and all were collected about a quarter to 4, they all saw a man in grey and a man in black run towards them, in the order named; that Barnaby exclaimed, "The foremost is old Booty, my next door neighbor;" and that the figures vanished into the flames of the volcano. This occurrence, by Barnaby's desire, was noted in the journals of the three ships. Later on October 6, 1687, the party was making merry at Gravesend, when Mrs. Barnaby remarked to her husband, "My dear, old Booty is dead." The captain replied, "We all saw him run into hell." Mrs. Booty, hearing of this remark, sued Barnaby for libel, putting her damages at £1,000. The case came on; the clothes of *feu* Booty were shown in court; the date and the hour of his death were stated, and corresponded within two minutes to the moment when the mariners beheld the apparition in Stromboli. "So the widow lost her cause."

In a well-known case before the Parliament of Bretagne, the ghost of a man who had mysteriously vanished guided his brother to the spot where his wife and her paramour had buried him after murdering him. The wife was strangled and her body burned. But in a similar case, where a woman, with her children and their nurse, was mysteriously murdered in broad daylight and her ghost appeared to her husband, while he was wide awake, denouncing her own cousins, the accused were discharged for the lack of other evidence than the existence of a motive.

It has been stated as a "newspaper truth" that an old gentleman, upon being informed by a member of his family of an intended plot of young men to frighten him by tossing a stone into his chamber window, quickly donned a portion of his undergarments only, and put himself in ambush. As the "practical jokers" approached the old gentleman sprang up, frightening away all but one. This one knocked the old man down, and, when arrested for assault, pleaded that he "thought it was a ghost, and wasn't going to run from it." He was discharged.

Sir Walter Scott, in a brief essay on "Ghosts before the Law," written a short time before his death, reprints "The Trial of Duncan Terig alias Clerk, and Alexander Bane Macdonald, for the Murder of Arthur Davis, Sergeant in General Guise's Regiment of Foot, June, 1754," a tract previously edited by him, "as a pure labor of love," for the Bannatyne Club. The defendants in this very remarkable ghost case were charged with shooting Sergeant Davis on September 28, 1749, on Christe Hill, at the head of Glenconie, where the body lay concealed for some time, and likewise with the taking of his watch, two gold rings, and a purse of gold, whereby Clerk, previously penniless, was enabled to buy and stock two farms.

In June, 1750, so it was testified, the apparition of a man in blue appeared to one Alexander Macpherson, and said: "I am Sergeant Davis." Although at first taking this man for a brother of Donald Farquharson, another witness in the case, Macpherson followed him—or it—to the door, where the spectre repeated its assertion, and pointed to the spot where the bones lay. He found them there, and then went to Donald Farquharson, who at first doubted his story. Fearing that the ghost might vex him, however, Farquharson went with his friend and was shown the body in a peat-moss, much decayed

and the dress in tatters. Later the ghost came again to Macpherson naked, and this led him to inter the remains. On this second appearance the prisoners were denounced as the murderers, a thing which the ghost had previously refused to do, because the beholder had asked the question. Macpherson also gave other nonspectral evidence, implicating Clerk, whom, it seems, the whole country side had suspected of the murder. But when asked what language the ghost spoke in, he answered, "As good Gaelic as he had ever heard in Lochaber." "Pretty well," said one of counsel, "for the ghost of an English sergeant." This repartee was doubtlessly conclusive with the jury, for they acquitted the prisoners, in the face of other very incriminating evidence. As Scott says, the attorney's remark was "no sound jest, for there was nothing more ridiculous in a ghost speaking a language which he did not understand in life, than there was in his appearing at all." But jurymen are seldom logicians.

Sir Walter also tells of how the ghost of a man who, before his death, confessed to his wife that he and one Cole had committed a murder for which another had suffered, haunted the widow until Cole was arrested. Here, too, the accused was acquitted. But the accused in another early English case was not quite so fortunate. Here the brother-in-law of the accused while watering a quick-set hedge saw "the apparition in the form of a woman walking before him," and, upon investigating, discovered near by the dead body of the accused's wife.

A former resident of Fort George, N. B., is responsible for the following: An old woman of strict and sober habits, who was employed by the whole neighborhood as a messenger, suddenly and mysteriously disappeared. Nothing could be discovered of her, and at length the search was discontinued at the instance of her husband. One evening Mr. H. sat reading in his arbor. What was his consternation when the missing woman, with a broad crimson streak around her neck, suddenly thrust her head through the leafy shield! She uttered not a word, but the impression seemed to be conveyed to Mr. H's mind that she had been murdered, and that her body lay concealed under stable refuse in a distant byre. Search was made there. The corpse was found, and subsequently the husband, on his own confession of the crime, was executed.

Of the several French spectre cases recorded, perhaps, the most remarkable, certainly the most extended, was finally fought out to the bitter end before the Parliament of Aix. Honoré Mirabel, a poor farm laborer living near Marseilles, declared that, while lying under an almond tree late one night, striving to sleep, he suddenly saw a man of unusual appearance standing a few paces distant, in the full moonlight, at the upper window of a neighboring house. Knowing the house to be unoccupied, the bold Mirabel rose to question the intruder, who immediately disappeared. A ladder being at hand, Mirabel mounted to the window, and, on entering, could see no one. Much alarmed, he rapidly descended and went to a well, drew some water, drank, and then heard a weak voice at his back saying: "Pertuisan" (he was of Pertuis), "there is a large treasure buried close at hand. Dig, and it is yours."

A small stone then fell on a certain spot,—stone-throwing is such a favorite pastime with ghosts everywhere!

Later, it was averred, Mirabel, assisted by another laborer, dug and found a packet of dirty linen, which they dipped in wine for the want of vinegar, fearing that it might be infected with plague. The parcel contained more than a thousand Portuguese gold coins. After having himself bled several times to relieve his agitation, Mirabel, in his perplexity as to what to do with his treasure, consulted a friendly and wealthy merchant of Marseilles, named Auguier, who advised him to keep his old coins a close secret, as to put them in circulation would lead to inquiry and inconvenience. For, the French laws were peculiarly explicit respecting "treasure-trove," and it was not certain how far the decision of the ghost would be held to override them. Meanwhile he lent Mirabel some ready money, and finally induced him to intrust the Portuguese hoard to his care, giving his receipt in return.

Subsequently he tried to murder the

lad, and, refusing to return the deposit, Mirabel made accusation against him.

The case was in the courts for twenty months, during which time three processes were issued, fifty-two witnesses examined, and things supernatural thoroughly considered. This was fatal to the ghost and Mirabel, who was condemned to the galleys for life. For, under torture, the lad confessed that one Etienne Barthelemy, a declared enemy of Auguier, had devised the spectral fable, as a ground for the intended accusation, and, to substantiate the latter, had lent him for exhibition the sum of twenty thousand livres. By an after process, Barthelemy was also sentenced to the galleys for life, and two witnesses to be hung up by the armpits in some public place for false swearing.

In a famous case before the Parliament of Paris not earlier than 1550, it appeared that a house was let in the suburbs of Tours, and that the tenant, being promptly disturbed by "a noise and routing of invisible spirits, which suffered neither himself nor his family to sleep o' nights," as promptly went to law. The lower court broke the lease, the hauntings being considered insupportable nuisances. But this he did without letters royal, and the lessors appealed on the formal point.

Then the ghost was in for it. The learned counsel for the lessors laughed at the very idea of noisy spirits, and cited Joan of Arc, and quoted from Plato, Philo Judæus, Empedocles, Marcus Aurelius, Tertullian, Quintilian, and Dioscorides, as anti-ghost authorities. He concluded that the tenant and his family were suffering from nightmare, and suggested that they should consult a physician, and not a solicitor; or, granting that the house was haunted, that they should appeal to the clergy, and not to the law. Naturally the tenant's advocate did not appreciate his adversary's sense of humor, and told him so. He, too, called upon the ancients for assistance, citing Pliny, Plutarch, Suetonius, Ovid, the Fathers, and whom else do you suppose? Why, none other than the selfsame Plato, whom his adversary had quoted so glibly to the contrary. Obviously that philosophic one, like many of our courts, either overlooked, or found good reason for overruling, a former decision; or else he was an equitable soul and wished to satisfy both parties! Anyway, however, it seems that the lower court was reversed, and the poor tenant, of course, had to endure his unwelcome cotenant, or pay the full term's rent and vacate.

At Bordeaux in 1595, under very similar circumstances, the tenant left the premises, and demanded the cancelation of his lease. The lessor's advocate argued, first, that "the only apparitions in the world are the good or evil designs of the soul suggesting good or evil thoughts;" that "as to the supernatural, the ancient bacchantes and priestesses of Cybele fancied they were inspired, when in fact they were only tipsy with the fumes of wines;" and, second, that "even assuming the presence of demons, the complainant had not shown that before his departure he had used diligence to drive them away;" that "he had not resorted to lapwing feathers, nor to the gall of the dog," etc.; that "Saint Chrysostom says that devils cannot infest a room wherein is kept a volume of Holy Scriptures." Commissioners were appointed by the court to inspect the premises, and upon their report that no devils were found, judgment was rendered for the defendant.

Another case of this nature was heard in the sheriff court at Edinburgh in 1835–37. The tenant did not seek to have his lease quashed, but tore up floors, pulled down wainscots, and dug a hole into the next house, that of his landlord, in search of the cause of the noises. The landlord, therefore, brought an action to restrain him from these experiments. Unfortunately, however, the records of this case cannot be found, and the outcome is unknown,—but it is not very difficult to guess what the result should have been.

But, as to the right of the tenant to have his contract annulled, the authorities are not exactly in accord. The cases are generally settled, it is stated, in accordance with the suggestion of Alphenus, who says, in brief, that the fear must be genuine, and that reason for no ordinary dread must exist. Hence, Arnault Ferton in his "Customal of Burgandy," ad-

vises that "legitimate dread of phantasms, which trouble men's rest and make night hideous," is good reason for leaving a house, and declining to pay the rent after the day of departure. The Parliament of Grenada in one or two cases has decided in favor of the tenant and against the landlord of houses where spectres racketed. And in an Irish case decided in 1890 the tenant was allowed to give up the house without paying his rent.

In another Irish case decided five years earlier the jury took the view that the neighbor, who was accused of causing the disturbances on the leased premises, was innocent, and the real cause of the window breaking and so forth was left unsolved.

A case is accredited to the courts of Maryland in which a ghost seer is supposed to have testified as to the appearance of a deceased neighbor's ghost, which asked him to see that a will which had been left concerning certain real estate was properly executed by the executor, the ghost's brother. But this case is entitled to little credit, as it is possibly only an elaborate hoax.

However, a recent decision of the supreme court of Indiana (Craven v. Craven, — Ind. —, 103 N. E. 333) is to the effect that a ghost which fails, for a period of forty-five years, to appear and make known a will disposing of real estate in a certain manner, is guilty of laches, so that one claiming under the will cannot set up the record title against a title acquired by adverse possession. The court said: "While it may have been the intention of the uncle to bestow upon the appellee the real estate of which he died possessed, yet if he had the power to appear to the nephew and disclose the existence of the will in 1909, he is the only one who can be said to be to blame, and his failure to make the facts known for forty-five years had effectually barred the nephew's right to recover. This must be the law, else no title would be secure, however long it may have been occupied under a 'claim of right.'"

As to what attitude courts in the future will assume toward ghosts, it is impossible to say. Much will depend upon the success of scientific investigation, as the law follows closely the path of human experience.

And thus concludes this treatment of the *shadiest* subject in the law!

(N. B.—In the preparation of the foregoing, invaluable assistance has been derived from the following sources to which credit is due, and is hereby acknowledged: Burnham's Leading in Law and Curious in Court; Ghosts before the Law, 155 Blackwood's Mag. p. 210; Ghosts in Court, 15 All the Year Round, p. 428; 26 Am. L. Rev. p. 91; and 9 Juridical Rev. p. 338.)

Will H. Ackerly

Second Sight

Goethe (whose family by the way were ghost seers) relates that as he was once in an uneasy state of mind riding along the footpath toward Drusenheim, he saw, not with the eyes of his body, but with those of his spirit, himself on horseback coming toward him in a dress that he did not then possess. It was gray and trimmed with gold. The figure disappeared, but eight years afterward he found himself quite accidentally on that spot, on horseback, and in precisely that attire. This seems to be a case of second sight.—Wit and Wisdom.

Effect of Superstitious Beliefs or Insane Delusions upon Competency

BY ROBERT E. HEINSELMAN

of the California and Kansas Bars

"Senseless fear" and "pious worship" of the gods. These were the words used by Cicero to denote the difference between superstition and religion. The distinction appears sound, but the difficulty lies in the practical application. What is "senseless fear" and what is "pious worship?" And if the words of Aristotle are true, that "No excellent soul is exempt from a mixture of madness," who shall decide the question, in view of the time-honored maxim that no one shall be a judge in his own cause?

IN CONNECTION with the present subject the matter is doubly difficult, because it is not merely to determine whether there are superstitious beliefs or insane delusions, but also whether they are of such a kind and have such an effect on the act as to make it ineffective because the offspring of an unbalanced, deluded, or overpowered mind.

It was at one time the doctrine of the English courts that if a testator was insane on one subject, he was incapable of making a valid will, although he was rational in all other respects. For instance, in Waring v. Waring,[1] Lord Brougham supposed the case of a will made by one having a delusion that he was the Emperor of Germany and on all other subjects apparently of sound mind; if, it was said, the court were convinced that at the time he made his will someone had spoken of the German Diet or proceeded to abuse the German Emperor the delusion would have at once broken forth, the will would be pronounced void, although as rational in every respect as any disposition of property could be. This was said on the theory that the mind was indivisible, and that, consequently, if unsound in one respect, it could not be said to be sound in other respects.

Following this case, it was held in Smith v. Tebbitt,[2] that a testatrix who for the last thirty years of her life had conducted herself with propriety and prudence, discharging all ordinary duties, and exhibiting neither excess nor extravagance of conduct in common matters, was nevertheless insane and therefore incapable of making a will, where it appeared that for many years she was laboring under certain delusions, among others, that she was the Holy Ghost, and that a physician attending her was the Father, and that together with some other persons they constituted the Holy Trinity; that she was above God seven degrees, and that the great final judgment of man would take place in her own drawing room, where with the Creator she would sit in judgment on her fellow creatures.

But the doctrine of Waring v. Waring was repudiated in the leading case of Banks v. Goodfellow,[3] where it was held that delusions which arose from mental disease, but were not calculated to prevent the exercise of the faculties essential to the making of a will, or to interfere with consideration of the matters to be weighed and taken into account, and which had in fact no influence on the testamentary disposition in question, were not sufficient to deprive one of testamentary capacity. It was said: "The pathology of mental disease, and the experience of insanity, in its various forms, teach us that while, on the one hand, all the faculties, moral or intellectual, may be involved in one common ruin, as in the case of a raving maniac, in other instances one or more only of these faculties or functions may be disordered, while the rest are left unimpaired and undis-

[1] 6 Moore, P. C. C. 341.
[2] 16 L. T. N. S. 841.
[3] 39 L. J. Q. B. N. S. 237, 16 Eng. Rul. Cas. 713.

turbed . . . [that] there are delusions which, though the offspring of mental disease, and so far constituting insanity, yet leave the individual in all other respects rational and capable of transacting the ordinary affairs of life."

The vast majority of writers of the civil law agree with the modern common-law rule as above indicated.

Accordingly, it is now well settled that an insane delusion will not hinder a person from making a valid will, if the delusion does not affect the testamentary act. It has been held that even a monomaniac may make a valid will if the delusion has no relation to the subject or object of the will, or the persons who would be likely, ordinarily, to be the recipients of his bounty; and it has been held error to charge that if the testator was of unsound mind, he could not make a valid will, since he might be insane upon some subjects and yet sane upon all other subjects. Cooley, J., in Fraser v. Jennison,[4] said that a man might believe himself to be the Supreme Ruler of the universe, and nevertheless make a perfectly sensible disposition of his property, and that the courts would sustain it when it appeared that his mania did not dictate its provisions.

So, a delusion upon the part of a testator that he is a great man and likely to be called to the cabinet (not an uncommon delusion) does not deprive him of testamentary capacity where his will itself is rational, and not apparently affected thereby.[5] And a delusion entertained by a testator that he is holding or running for office, for which he solicited votes when there was no election pending, and to the effect that his wife courted him before marriage and maltreated him afterwards, does not affect the validity of his will, where it does not apparently affect its provisions.[6]

An instance of singular superstitious belief combined with testamentary capacity is found in the case of Re Vedder,[7] where it was held that the validity of a will in accord with natural claims upon the bounty of the testatrix, who was shown to be prudent and sensible in the management of her household affairs and to have other good qualities, was not affected by evidence that she believed in witches and witchcraft, and imagined that she saw headless horsemen riding across her fields, and had said that she could not keep her horses fat because witches rode them at night, and that she had conversed with Jesus and had seen the Evil One; also that she put irons in the cream, and marked the bottom of the churn with the sign of the cross to make the butter come.

On the other hand, the general rule is that no matter how sound the mind of the testator may have been in other respects, if the testamentary act is affected by an insane delusion, the will is invalid; and if the testator was even under a partial delusion, of which the will was a direct offspring, it is invalid.

Instances are numerous where wills have been held invalid as affected by what have been termed superstitions or delusions because denied by the common experience of men. For example, in McReynolds v. Smith,[8] the testator was held to have such an insane delusion as would invalidate his will where he believed that he was in direct communication with the spirit world, had actual communication with the spirits, had personally visited the planets and formed an acquaintance with their inhabitants, that it had been revealed to him that he should, after death, go to the planet Saturn and conduct a stone quarry, and that he had received instructions from the spirit world how he should make his will.

And in Re Lockwood,[9] a will giving an estate to charities and disinheriting every relative, allowing, however, the executor, a man of the highest character, a sum large enough to be over and above a bribe that might be offered to him by relatives "for the redemption of this will and their heirship to my estate," was set aside where it was made by one who took borax "to weld up his inwards;" who asserted that chloroform angels had saturated his bedclothing to kill him; that his relatives and Indians were endeavoring to kill him; and who, sometimes for

[4] 42 Mich. 208, 3 N. W. 882.
[5] Rice v. Rice, 50 Mich. 453, 15 N. W. 545.
[6] Ibid.
[7] 6 Dem. 92.
[8] 172 Ind. 336, 86 N. E. 1009.
[9] 2 Connoly, 118, 8 N. Y. Supp. 345.

half a day at a time, would dig into the earth with an old bayonet to kill devils, and who dug holes and poured in water to drown them.

So, a delusion in regard to one's property may or may not render invalid an act respecting the property, depending upon the influence of the delusion on the act. In Alston v. Boyd,[10] a deed was held to have been made under the influence of a delusion and to be invalid, where the grantor became impressed with the belief that the house on the premises and the beds were haunted with evil spirits, and would take a shovel and beat the ceiling to drive them away, and, not succeeding, set fire to the house and burned it up to destroy them; and, having a fancy that something was in his head and could be removed by an operation, offered a slave his freedom if he would split his head open with an ax; believed that he had power to call down fire from Heaven to consume persons imagined to be his enemies, and announced that a son born to him was Jesus Christ.

But a lease of part of a tract of land was held valid in Jenkins v. Morris,[11] although made by one who had a delusion that he and other things about and around him were impregnated with sulphur, to get rid of which he administered large quantities of castor oil, bored holes in the doors, pulled down buildings, and plowed up part of the land, where the lessor appeared to be competent to transact business, and there was nothing to show that the lease was made at an under value.

A great error in will contests on the ground of testamentary incapacity has often been in mistaking mere eccentricity for insanity. Eccentricity, however great, does not hinder a person from making a valid will. In Thompson v. Quimby,[12] the court said: "The germs of fancies and antipathies, of certain habits of thought and feeling, are often sown in youth; and, instead of being corrected as years advance, develop into the most obstinate prejudice, extravagant ideas, and the widest departures from the common sense of mankind. Such aberrations are generally the result of ignorance, and of early impressions formed in the nursery or by the fireside. . . . To confound the results of such causes with the phenomena of mania would erect a standard of sanity dependent on education and knowledge."

An example of marked eccentricity, combined with testamentary capacity, is found in the case of Lee v. Lee,[13] where the testator believed, among other things, that all women were witches, and would not sleep on a bed made by a woman; he thought some of his relations were in his teeth, and to get rid of them had fourteen sound teeth extracted; he had the quarters of his shoes cut off, saying that if the Devil got into his feet he could drive him out the easier; had holes cut on each side of his hat so that if the Devil came in on one side he could drive him out on the other; always shaved his head close, so that in a contest with the witches they might not get hold of his hair; he had swords made of all sizes and shapes, and as many as fifteen or twenty in a year, to enable him to fight the Devil and witches with success; in the daytime he dozed in a hollow log for a bed, and at night kept awake contending against the Devil and witches; and at one time fancied he had the Devil nailed up in the fireplace in one end of his house; a few years before his death he went to live with one who built a house for him about 12 feet square, but the testator complained that it was too large, and had one built 3 feet wide, 5 feet long, and 4 feet high, in which he ate, slept, and dozed away his time. Yet, it was found that he was capable of making a will, it appearing that he conversed sensibly on most subjects, and that, although a very singular man, he was not thought to be insane; and that he made frequent contracts, many of which were quite large, and which, although occasionally whimsical, were yet found to be generally advantageous to him.

So far, we have assumed that there is a delusion or superstitious belief. The question, however, becomes somewhat more complicated, when it cannot be said

[10] 6 Humph. 504.
[11] L. R. 14 Ch. Div. 674.
[12] 2 Bradf. 449.
[13] 4 M'Cord, L. 183, 17 Am. Dec. 722.

directly that a delusion exists and that there is no basis whatever for the extravagant idea except in the heated imagination of the one cherishing it. The rule has been laid down that belief in the doctrines of any church is not such an insane delusion as will invalidate a will.[14] But possibly it would be necessary to define the term "church" before all would agree with the soundness of this rule. Are there not some beliefs, the rationality of which the courts cannot and should not attempt to decide, which may not, nevertheless, be sufficient to render invalid a will made under their influence? It seems so, if the law is to be the instrument to execute ordinary justice in commonplace affairs.

For instance, if one believes in spiritualism, is he incompetent to make a will? To this the courts have rightly said, no. The decisions appear to be unanimous in holding that a belief in spiritualism is not in itself evidence of testamentary incapacity, if the testator, in making his will, is free from the influence of his belief. Even though one is an ultraist regarding all the doctrines of the spiritualistic belief, it has been held that he is not therefore incompetent to make a will. But suppose these beliefs go so far as directly to affect the will; if, for example, the testator's belief in spiritualism causes him to execute his will in favor of a medium? In these cases wills have been set aside on the ground of undue influence.

Thus, there is evidence of undue influence where a testatrix, prior to the making of her will, accompanied a favorite legatee to the house of his attorney, where at a spiritualistic seance a pretended letter was read from her deceased husband, warning the testatrix against her son, and advising her to fix her property so he would not get it;[15] or where the testator submitted to the influence of his second wife as a medium between him and the spirit of his first wife.[16] There are cases, however, holding that a belief in spiritualism does not incapacitate one from making a valid will, unless there is actual unsoundness of mind, even though the testator was influenced by supposed spiritualistic communications.

While a belief on the part of a testatrix that the spirit of her deceased husband is present with her is not an insane delusion, so as to affect the validity of her will,[17] yet it was held[18] that if she believed that the spirit of her deceased husband directed or dictated the will, and acted under this belief, it was invalid. In such a case, if the spirit did not dictate the will, the testatrix was deluded in a matter directly affecting it; and if the spirit did dictate the will, it was not the testatrix's but the spirit's will; so that, whatever our views regarding the reality of the matter, all that is needed to set aside the will is the reality of the belief.

Of course, spiritualistic belief may be strong enough to make one easily the prey of undue influence, and may be considered with reference to this question and that of mental weakness, even though it is not in itself sufficient to show incompetency; and any speculative belief, whether it belongs to the class that is termed religious, because it is "pious worship," or to that other class termed superstitious, because it is "senseless fear," may go so far as finally to upset the mind and create incompetency. In Williams v. Williams[19] the court said that if a testator was a monomaniac upon religion, he was of unsound mind. But the same case affords an illustration of what courts have regarded as not constituting religious insanity to the extent of incapacitating one from making a will. In that instance, the testator had, twenty years before the making of his will, been confined for a short time, because of religious mania, in an insane asylum; and after his discharge he was a great reader of the Bible and of a religious paper; before he made his will he prayed much at night on the farm, and at last professed to have seen three lights, a large light, a smaller light, and a still smaller light, and that God said that the large

[14] Newton v. Carbery, 5 Cranch, C. C. 626, Fed. Cas. No. 10,189.

[15] Greenwood v. Cline, 7 Or. 17.

[16] Balyies v. Spaulding, — Mass. —, 6 N. E. 62.

[17] New Jerusalem Church v. Crocker, 7 Ohio C. C. 327, 4 Ohio C. D. 619.

[18] Robinson v. Adams, 62 Me. 369, 16 Am. Rep. 473.

[19] 90 Ky. 28, 13 S. W. 250.

light was the Baptist Church, the second in size the Christian Church, and the third was the Methodist Church. Yet in view of other evidence of success in business and of rationality upon other subjects, as well as religion, he was considered competent.

And the extent to which the courts have gone in upholding testamentary capacity as against mere superstitious belief is well illustrated in the case of Thompson v. Quimby,[20] where it was held that mental derangement, so as to affect the validity of the will, was not shown by the fact that the testator, who claimed to command the planetary spirits, believed also in mesmerism, clairvoyants, divining and mineral rods, dreams and spiritual influences; and said that when teeth had been lost through old age, a little of the philosopher's stone put into the gums would bring out new teeth; and that mineral rods were made by mixing certain metals and herbs at particular hours of the day, putting them into a hollow bone or quill, and placing them in the Bible at a certain chapter, where they were to lie until ready for use; and who searched for supposed deposits of money by Captain Kidd and ascribed his fa[illegible]e to find it to the utterance of certain words.

Belief in Christian Science, of course, does not show testamentary incapacity or insanity; and repeated declarations that one has been healed of disease by Christian Science does not amount to an insane delusion. These are questions, however, which the courts have been called to pass upon. In the case of Re Brush,[21] it was held that the fact that when a physician asked the testatrix, who was a believer in Christian Science, what she would do if a foreign body were embedded in her eyeball, she replied that she would go to the Christian Scientist, who would remove the pain, so that it would make no difference whether the foreign body were in her eye or not, and that when asked what she would do if she were bleeding to death by having a limb cut off, or what effect it would have if the blood were extracted from her body, she replied that she would not die if her mind were in harmony with the Divine Mind, did not show an insane delusion.

The courts have been asked to pass upon many strange and mysterious beliefs as affecting testamentary capacity; for instance, belief in degrees of happiness in a future state of existence, depending upon the amount of property possessed here and the charitable purposes to which it is devoted; belief in the doctrine of metempsychosis, or the passing of the souls of men after death into animals; belief that a departed person to whose picture the testator talked held the "keys of the Kingdom," and could hear and understand what was said to him; and belief on the part of an Englishman who had embraced the Hindoo and Mohammedan faiths that he and God were one, that he was next to God and was a second prophet,—all of these and many more, as to some of which the words of Polonius to Hamlet are true, that "though this be madness, yet there is method in't," have solemnly been adjudged by the secular tribunals of justice as not such delusions as necessarily to render their possessors incompetent to make a will.

The old English doctrine that in law the mind is one and indivisible seems rightly exploded, but the many fragments that have appeared in court since the explosion have been even more than ever baffling to legal learning, and have added greatly to strengthen the conviction that the incomparably greatest work of the Creator is the human mind.[22]

R. C. Heinselman

[20] 2 Bradf. 449.

[21] 35 Misc. 689, 72 N. Y. Supp. 421.

[22] For additional authorities on which the statements herein are based, the reader is referred to notes in 16 L.R.A. 677, 37 L.R.A. 261, 15 L.R.A.(N.S.) 674, and 27 L.R.A.(N.S.) 1.

Wills and Ghosts

BY E. VINE HALL

of London, England

Author of "The Romance of Wills and Testaments."

IN CATALOGUES of sellers of old and curious books there sometimes appears this item: "Sir Walter Raleigh's Ghost; or his Apparition to an intimate Friend, willing him to translate into English this learned book of L. Lessius entitled *De Providentia Numinis et Animi Immortalitate*" (1651).

The ghost of Sir Walter is made to speak thus:

Dear Friend:—

Whilst my soul was clad in flesh, and my body enjoyed the air, which now thou breathest, I much valued thy friendship. My spirit at this time is permitted by the Almighty to appear to thee, to intreat a favour. Thou well knowest that the World—hath at sundry times cast a foul and most unjust aspersion upon me for my presumed denial of a Deity. From which abominable and horrid crime I was ever most free. And not any man now living better knows the same than thyself, in whose presence (if thou dost remember) I was often accustomed highly to praise and esteem the book of Lessius, written in proof of the being of a Deity, and entitled *De Providentia Numinis.*

My humble and earnest request is that thou wouldst take the pains to translate the said Treatise into English (which I myself had done if cruel fate had not untimely cut the thread of my mortality); and let the Title bear my name, that so the readers may acknowledge it as done by my solicitation.

. . . So wishing thee true felicity, and the world more charity in its censures, I am in haste to leave thee, since my spirit is not suffered to stay any longer upon earth, but must return with speedy wing to the place from whence it came.

The Ghost of Sir Walter Raleigh.

Although this message may represent but a pleasant literary device, the germ of a philosophy of apparitions is contained in it. Accounts of apparitions are frequently found in which the purpose of the spirit or phantasm is to deliver some communication in the nature of a will. As I have said elsewhere, it is not surprising that stories of haunting or of the supernatural should be linked with wills. The perturbation of the dying man, as he utters his last bequest or ponders upon his affairs; the failure to make his wishes known; noncompletion of the will or its loss; concealment of his treasure or hoard; here are the bases or occasions for many a tale of spirit and of ghost. These categories are not exhaustive. There is, for instance, a type of narrative in which the spirit appears in order to acquaint the living with the means of rendering it relief from its pains. Thus the spirit of Pope Benedict (presumably the VII. or VIII. of the fourteen former Popes of that name) is related to have besought the Bishop of Capua to take steps to secure fulfilment of what might be called a codicil to his will. The following dialogue is recorded to have passed on this occasion, constituting a kind of posthumous and verbal testament:

"Art thou not Pope Benedict, whose death was lately noised abroad?"

"I am," he said, "that miserable man."

"How then, Father, farest thou?"

"Grievously am I tormented, but of God's mercy I do not despair if help be given me, for I may be holpen. Go, I pray, to my brother John, who now assumes the Apostolic Seat, and tell him on my behalf to distribute amongst the poor a certain sum, deposited in a certain vessel, and let him know that by this I

shall obtain deliverance whensoever the Divine pity shall so decree." [1]

In many wills a prominent place is given to the testator's directions for the disposal of his remains. In the will of Favonius, made in the War in Lusitania against Viriathus (142 B. C.), the testator invoked his *manes* to avenge him, if his sons did not remove his bones and bury them on the Latin Way.

"There seems," says Mr. Virgil M. Harris in "Ancient, Curious, and Famous Wills" (where several such directions are quoted), "to have been a wide-spread primitive belief that the spirit of the departed could not rest in peace unless the obsequies were duly performed. Thus, the ghost of Patroclus appeared to Achilles to request that his body might be buried in order that he might pass the gates of Hades."

An instance of a murdered man's desire to secure the burial of his bones, and (apparently) the apprehension of the murderer, is thus recorded by the Rev. B. W. Savile in his book of "Apparitions" (1874).

"On the 10th of June, 1754, Duncan Clark and Alexander Macdonald, two Highlanders, were tried before the Court of Justiciary, Edinburgh, for the murder of Arthur Davis, sergeant in Guise's Regiment, on the 28th of September, 1749. . . . Sergeant Davis was known to have had about his person both money and rings, some of which were subsequently found to be in possession of the accused; and it was assumed that robbery had been the sole object of his murderers. It is certain that Davis was missing for several years, without any certainty as to his fate. At length an account of the murder appeared from the evidence of one Alexander Macpherson, a farm servant living at Inverary. . . .

"He stated that on a certain night, when he was in bed in his cottage, he was disturbed by an apparition which came to his bedside, and commanded him to rise and follow him out of doors. When they were without the cottage, the apparition informed him that he was the spirit of Sergeant Davis, who had been murdered five years before, requesting him at the same time to go and bury his remains, which lay concealed in a place that he pointed out. He also desired the witness to take his neighbor Farquharson as an assistant. The day following, the witness, accompanied by his neighbor, proceeded to the place specified, where they discovered the bones of a human body, though evidently in a very great state of decay. They did not at the time bury the bones so found; in consequence of which Sergeant Davis's apparition again appeared to Macpherson, upbraiding him with his breach of promise. On this occasion the witness inquired of the apparition the names of the murderers, and received for answer that he had been slain by the prisoners at the bar. The witness, after this second appearance, again visited the scene of the murder, and with the assistance of his companion at once buried the remains of Sergeant Davis. . . .

"Notwithstanding this extraordinary tale, corroborated though it was by other strong presumptions against the prisoners, the story of the apparition threw an air of ridicule on the whole evidence for the prosecution. . . . Giving the accused the benefit of a doubt . . . the jury returned a verdict of not guilty."

Another tale pertinent to the present paper, and characteristic of the kind of ghostly narrative which is common in cases where succession to property is concerned, is thus recounted by Mr. Savile.

"During the American War of Independence (1774) two officers of rank were seated in their tent, awaiting the return of Major Blomberg, then absent on a foraging party, to go to supper. Their patience was well-nigh exhausted . . . , when suddenly his well-known footstep was heard approaching. Contrary, however, to their expectation, he paused at the entrance of the tent, and, without coming in, called to one of them by name, requesting him with much earnestness, as soon as he returned to England, to go to a house in a certain street in Westminster, and in one of the rooms, which the speaker minutely described, he would find papers of great consequence to his son, then a child about ten years of age.

[1] Quoted in the Latin from Wolfius's "Lectiones Memorabiles et Reconditae" by Dr. John Ferriar in "An Essay towards a Theory of Apparitions" (1813).

He then apparently turned away, and his footsteps were distinctly heard retiring till their sound was lost in the distance.

". . . A sentinel keeping his watch not far from the tent was questioned, but denied that he had seen or heard anyone, although, as they believed, their friend must have passed close by his post. Shortly after, their amazement was changed into a more painful feeling by the approach of the visiting officers of the night, who informed them that the party which went out in the morning had been surprised, and that the dead body of poor Major Blomberg had been brought into the camp about ten minutes before. . . .

"On the return of the regiment to England, no time was lost in endeavoring to fulfil the request of their deceased friend. The house was found without difficulty, and in a certain room . . . an old tin box was discovered . . . containing the title deeds of some property in Yorkshire. . . . There were apparently some family disputes respecting the true heir to this property, which occasioned the audible, but unseen, visit of the father to friends who he knew would protect the interests of his orphan son."

I must close with a narrative of quite another nature, communicated to the *Annals of Psychical Science* (vol. VII. No. 48) by Miss Helen A. Dallas in December, 1908.

"In June, 1903, the idea came to me that I should visit a certain professional medium from whom I had previously received some interesting clairvoyant descriptions. I put the idea aside, however, as I do not habitually act on such impulses unless I see some good reason for doing so; but the idea pursued me, and when it recurred so persistently I at last decided to make an appointment with the medium in question, with the object of satisfying myself whether this impulse was significant or merely accidental. Accordingly I visited him a few days later.

"During our interview he described an elderly gentleman whom he apparently saw by looking in the crystal, and his description recalled to me my guardian, who was also my uncle. He told me that he had recently 'passed over,' which was correct, and, although the age he gave him was about four years younger than that at which he died, this was not surprising, for he looked younger than he really was. Soon, still looking in the crystal, he said, 'I get the word, "Uncle."' This did not surprise me, for telepathy would easily account for this. He followed this up, however, by asking: 'Did he help you to arrange any papers before he passed over?' I replied that he had assisted me in drawing up my will, either on the last occasion of my visiting him, or at least during one of my last visits. Then he said: 'I get the word "incorrect" so strongly.' This surprised me, and I asked whether he meant that my uncle wanted me to alter my will. 'No,' said the medium, 'the basis of it is all right, but there is something incorrect in it. I think he will impress you as to what it is when you see it.'

"When I returned home I wrote for my will, which was in the keeping of my solicitor. But I certainly received no impression on looking at it, except the impression that I could not understand it; being unfamiliar with legal terminology, I needed an interpreter to explain to me just what the will I had made some years previously might signify.

"I determined to send it to a legal friend, and to ask him if he could discover any error in it.

"Shortly afterwards I received his reply, dated July 1, 1903. It was as follows (I copy from his letter, which I still have):—'The will as drawn appears to me to contain a bad blunder, which would defeat your intentions to some extent. . . . It is not the first time that I have found solicitors under the impression that a "bequest of money and securities for money" would include shares in public companies and government and other stock.'

"The rest need not be quoted; this passage suffices to show that the clairvoyant's impression that something was 'incorrect' was right, and also that the error was not one that I could have telepathically conveyed to him; neither, as far as I can see, could anyone have telepathically conveyed it, except my uncle.

He, of course, was not aware of it when the will was drawn up, therefore this could not be a case of delayed telepathy. If, however, he became aware of the error after his decease, it seems to me that it was entirely consistent with my knowledge of him, and with the position he held towards me, that he should endeavor to rectify the blunder. . . .

"There seem to me to be only two possible explanations of this occurrence: either the circumstances constituted a purely accidental coincidence, or some intelligence other than my own directed the circumstances, impressed me to go to the clairvoyant, and impressed him to tell me what he did."

Be these things as they may, there is no doubt that to look for the law in the occult, and for the occult in the law, has the fascination of all elusive pursuits.

E. Vine Hall

From photograph of the author, his wife and son, taken in the garden of their residence in Midmoor Road, Wimbledon, London. S. W.

The Necessity For A Public Defender

BY

MAYER C. GOLDMAN

Of the New York Bar

THE proposition that the state should provide for the creation of a public official to be known as a "public defender," which official should be a sworn officer, whose duty it shall he to defend persons accused of crime when such persons are financially unable to retain proper and competent counsel in their behalf, contemplates a radical departure in our system of criminal procedure, and an additional safeguard to the rights and liberties of persons who may innocently fall into the meshes of the criminal law. There are those who believe that, under our present method applicable to the trial of criminal causes, those accused of crime are already too carefully protected by various legal presumptions and technicalities, and they believe that the administration of the criminal law in our courts is highly unsatisfactory, unnecessarily expensive, and unduly protracted. That there is much ground for some of the objections that have been urged against our whole system of criminal procedure cannot be successfully denied. Despite this condition, however, if by the creation of the office of public defender, greater opportunity and power could be placed at the disposal of a person accused of crime to establish his innocence, or to combat the testimony of the people's witnesses, without thereby delaying, defeating, or embarrassing the cause of true justice, but on the contrary the administration of the criminal law could be facilitated, expedited, and improved, and a more dignified and orderly exposition thereof insured, I take it that such a step would be in the nature of a vital and much-needed reform.

I assume that the majority of right-thinking men and women believe that the ascertainment of the truth is the cardinal consideration in the trial of a case, whether civil or criminal, and that in a criminal case, where the life or the liberty of a defendant is involved, any and all legitimate means which can be devised to bring out the truth in the particular case under consideration should be resorted to, to accomplish that end. Have we under our present system, the best or most efficient method of establishing the truth and seeing that equal justice is done? Is the contest between the people, with all the power, prestige, and means that such term implies, on the one hand, and the person charged with crime, on the other hand, an equal one? If the contest be an equal one, then there is no need for the creation of the office of public defender; but if, on the contrary, the state and the individual are not placed upon an equal footing, without equal resources or equal power, then there must

be something radically wrong with our prevailing system; then the term "equality before the law" becomes a meaningless phrase.

The prosecuting attorney is a public officer, because he represents the sovereign power of the state, by whose authority, and in whose name, under the Constitution, all prosecutions must be conducted. He is vested with the responsibility of determining whether or not a criminal accusation should be pressed to trial. The duty to conduct such prosecutions embraces whatever is properly necessary to bring a criminal to trial. His powers and resources are broad and far reaching. As the representative of the people, he enjoys the respect and confidence of the courts. He is a part of the machinery of justice, although by the very nature of his official position he is bound to be, what the title of his office implies, a prosecuting officer, and more or less a partisan. It is not my purpose to cast any reflections upon the integrity or conscientiousness of prosecuting attorneys in general, but prosecuting attorneys, like the rest of us, are human. It is a matter of common experience among those who have had occasion to observe the atmosphere of criminal trials, that the prosecutor is often carried away by his excessive zeal to obtain a conviction, due perhaps to an outraged public sentiment against the prisoner, due perhaps to the bad character of the prisoner, due perhaps to the prosecutor's desire to win his case and establish a record for convictions, although I think it fair to state that I believe that the last-mentioned consideration affects the fewest of our prosecuting attorneys.

A defendant in a criminal trial is granted, by our present Constitution, the right to appear and defend himself in person, or with counsel, any charge which is brought against him. He should not only have the right to be defended by counsel, but he should have the right to be defended by counsel as able, as dignified, as respected, as independent, and with the same prestige of the state behind him, to unearth and ferret out evidence and to produce witnesses in his favor, as the district attorney has with the machinery of his powerful office.

It is an indisputable fact that while a defendant of financial means can and does employ high-class and expensive counsel to defend him, and has the resources to enable him to properly and adequately prepare his defense, the poor and ignorant defendant, without means or intelligence, and perhaps a stranger to our laws and customs, is compelled to wage an unequal contest against the great forces of the state arrayed against him. It is unfortunately true that there is in all communities a class of lawyers who are not thoroughly representative of the great profession of which they are members, and whose regard for the rights or liberties of their unfortunate clients is limited by the commercial or financial aspect of their clients' situation. I do not assert that it is the function of a lawyer to undertake the defense of a person accused of crime, without receiving adequate compensation for his services, any more than he should practise any part of his profession without receiving compensation, or than a merchant should dispose of his stock without getting his price therefor. It is true that the courts do appoint lawyers to defend persons charged with crime, without compensation, and that on rare occasions distinguished counsel is appointed to defend a prisoner, but such assignments as a general rule go to young and inexperienced attorneys, or very often to the criminal practitioner who happens to be in court at the time, and who, as a rule, is not very keen about accepting such uncompensated assignments. For some years past, there has been a law in New York by which counsel assigned to defend persons charged with homicide are entitled to receive a compensation of $500 for the defense of such a case, but that sum is frequently inadequate.

If it is a function of the public purse to pay for the defense of persons charged with murder, why should it not be equally a function of the public purse to pay for the defense of persons charged with minor crimes? The fact that to send an innocent person to death in penalty for a murder which he did not commit, is a very tragic and terrible matter, does not destroy the seriousness of the fact of

sending another man to prison for even a brief period on conviction for a minor crime which he did not commit. It is not fair to the lawyer or to the prisoner, that the former should be required to devote his time, skill and best efforts to a defense, without receiving fair compensation.

I contend that with a public defender charged with the duty of defending people accused of crime, the following benefits, among others, would accrue:

1. That the rights of defendants in criminal cases would be better preserved.
2. That their cases would be more honestly and ably presented.
3. That there would be fewer unscrupulous and perjured defenses.
4. That our prisoners, poor or rich, would be placed upon a true equality before the law.
5. That the truth in any trial could be more satisfactorily established.
6. That there would be less opportunity for disreputable attorneys to obtain delays in the trial of cases, in order to extract fees from an unfortunate defendant, or from his relatives or friends.
7. That the trials in criminal cases would be expedited.
8. That there would be fewer pleas of "guilty" by prisoners, at the instigation of attorneys who do not care to be burdened with trials in cases where they receive no fee.
9. And that the tone of the criminal bar and of the criminal courts would be uplifted.

My recommendation would be that the public defender be an elected officer; that his compensation should be large enough to make it possible to secure the services of a competent, high-class lawyer, with such staff of assistants as might be necessary to properly conduct such office; that he should have the right to employ detectives and investigators to aid in the ascertainment of the truth in cases wherein he is actively interested. He should be as powerful as the prosecuting attorney, and in certain cases and under certain limitations, he ought to be permitted to go before the grand jury while a proceeding is pending before that body, and, being a sworn representative of the people, he should receive the same consideration from that body as the district attorney. There may be valid objections to this last suggestion. I, myself, am not certain that I should insist upon it. I make it here, less because of a mature conviction, than in the hope that it may give rise to profitable or perhaps conclusive discussion.

However, it seems reasonable that if the public defender, by his presence and standing before a grand jury, could prevent the finding of indictments which are not justified by the evidence submitted, or upon evidence which a petit jury would not regard as sufficient to convict, his usefulness in that respect alone would justify his existence, both ethically and economically. It is quite true that an indictment is consistent with innocence, that an indictment is simply a charge that a crime has been committed, that there is a legal maxim that "a man is presumed to be innocent until he is proven guilty;" but it needs no argument to convince us that the mere accusation of crime against a man discredits him in the estimation of the general public; that it frequently menaces, and often shatters, his physical, mental, and financial resources,—even though he should thereafter be fully vindicated by a jury of his peers. Indictments are too freely and too easily found —often on evidence of the most slender and unsatisfactory character, often because of public clamor and public prejudices—thereby casting a stain upon a man's character and reputation that no subsequent acquittal can ever offset. If a public defender could in certain cases, for instance, where the grand jury should accord a defendant the right to appear before that body either upon his demand therefor, or upon their request that he do so,—demonstrate to the satisfaction of a grand jury that it ought not to find an indictment, or combat the desire of the district attorney to procure an indictment on insufficient or improper evidence, his function would be highly essential to the liberty of the individual, and result in much economy to the state, through a saving of the expense of unnecessary trials upon reckless, unfounded, or faulty indictments.

The suggestion as to a public defender

is not entirely novel, nor is it a vague theory, without practical support in its favor. It has been favorably discussed and advocated from time to time in numerous influential newspapers, magazine articles, and in public addresses.

Very recently, the New York County Lawyers' Association and the Brooklyn Bar Association have appointed special committees to investigate the subject and to report thereon. Other public organizations are considering the subject and an active, persistent campaign is being waged to bring about the desired reform. Many judges, district attorneys, law reformers, distinguished lawyers, and public-spirited citizens favor the idea. A bill creating the office of public defender has been prepared by the writer to be submitted to the New York legislature of 1915. The Massachusetts Commission on Immigration recently reported that "a provision for public defenders should be made" in that state, and has prepared a bill for the creation of such office. In Oklahoma, a public defender has been in office several years, being appointed by and a part of the office of the commissioner of charities and correction. Dr. J. H. Stolper, who has accomplished much as the first and present incumbent of such office, has warmly commended the office as a power for the public good. Portland, Oregon, and Houston, Texas, are now experimenting with the public defender idea, the plan is being actively advocated in Boston, Seattle and Salt Lake City, and interest in the movement is becoming national in scope.

There is now a public defender in the city of Los Angeles, created by a recent provision of the county charter.

Such charter provides, among other things, as follows:—

"Upon request by the defendant or upon order of the court, the public defender shall defend, without expense to them, all persons who are not financially able to employ counsel, and who are charged, in the superior court, with the commission of any contempt, misdemeanor, felony, or other offense."

The present public defender of Los Angeles, Honorable Walton J. Wood, has prepared a most interesting pamphlet on this subject, wherein he has presented specific instances of the necessity and importance of thus safeguarding the interests of accused persons and of the successful administration of his office. The following extract from such pamphlet is worthy of note:—

"Probably the class of cases that calls for the services of the public defender most is that class where it is necessary to do some investigating to verify the stories of the accused and to find witnesses who might testify to facts tending to substantiate his contention. If no means are provided for making investigation or for examining witnesses for him, and if the attorney appointed by the court and working without pay does not care to do the work, the accused will be left without proper representation, and all the facts will not be brought to the attention of the jury."

The state should not permit any discrimination whatever, with regard to the securing of evidence. The unfortunate defendant should have the same right to present his facts to the court, as the complainant. It must be borne in mind that many criminal prosecutions are instigated through improper motives,—that often they are made spitefully, maliciously, or from a desire for revenge against the accused; that when such motives prompt a criminal charge the complainant is easily tempted to bolster up such charges by perjured or reckless testimony. Our laws should be so constituted that the powerful machinery of justice should not be put in motion against an accused person until the truth of the complainant's story is subjected to every reasonable test that the accused can offer through any competent testimony.

The Honorable Gavin W. Craig, judge of the Superior Court of Los Angeles, has stated over his signature as follows:—

"The trial which has thus far been given of the idea of having a public defender has been satisfactory. It is my belief that it will be an established office as much so as that of the prosecuting attorney; that it tends to the securing of a proper and just administration of the law by, and in some cases at least, securing for defendants a more able defense than they would otherwise have; on the other hand, protecting the public from the use of methods which are sometimes questionable on the part of private defenders."

The favorable comments of six Los Angeles judges, of the district attorney of Los Angeles, and of the Los Angeles press, are eloquent tributes to the efficacy and necessity of a public defender. It is most interesting to note that the district attorney of Los Angeles endorses the office although at first the idea did not appeal favorably to him. He now believes "that there is a place in our criminal jurisprudence for such an office."

It has been urged by some who are opposed to this idea, that the district attorney and public defender might clash in their respective duties, or that the defender might counteract the work of the prosecutor, thereby hindering rather than furthering the cause of justice. The answer to this objection is that in Los Angeles, according to the statement of the public defender there, both officials "are working harmoniously," that both offices "are trying to bring about the just administration of the law;" that the public defender "simply puts on a sound, sensible, and fair basis, the representations of the accused;" that the office "is simply an efficacious means towards bringing about the end which we are all seeking to reach." It is also apparent that "while the law imposes upon the district attorney the duty of presenting the evidence against the accused person, and upon the public defender the duty of presenting the evidence in his favor, the law does not ask the district attorney to convict an innocent person, nor does it ask the public defender to acquit a guilty person. Both can present their respective sides in the most intelligent and fair manner. It is then a question for the jury and the court to decide."

Another objection urged is that of the expense involved. The Los Angeles experiment does not sustain this objection. Judge Willis, of the Superior Court of Los Angeles, recently stated that "it (the public defender's office) has been a great saving to the county in the matter of expense," and he also stated: "I am well satisfied with the efficiency of the office and of the necessity for its continuance as a matter of *economy* and *justice*." The expense would be inconsequential, when we take into consideration the benefits conferred, and we certainly ought not to refrain from giving our support to a plan which means so much for the advancement and elevation of our criminal procedure.

It has frequently been urged, that it would be an anomalous situation that the state, which pays a prosecutor to run down and punish crime, should also pay another official to defend persons charged with crime. If we assume, that the accused is innocent until he is proven guilty, the due administration of justice necessarily requires that as much effort be exerted by the people to defend as to prosecute the accused.

The Los Angeles experiment is significant and impressive, and must be persuasive. It takes us away from the realm of theory, and affords a concrete, practical illustration which we may well be guided by. It affords a complete answer to those skeptics who are apt to be dismayed by the thought that this essentially sound idea is merely a fanciful dream, and may serve to awaken them to the fact that it is a real, living, human accomplishment. In my opinion, the advantages of such a proposed change vastly outweigh and outnumber the objections thereto. I believe that the passage of any law, which would have a tendency to place all of our citizens on an equal footing and would tend to strengthen and preserve their rights and liberties, must necessarily appeal to the intelligence and reason of the people.

Is there a real and vital necessity for the creation of such an office, it may be asked? Have we not managed to get along from the time of the institution of our government without this new fangled idea? Is not our present system of administering justice in criminal cases sufficiently comprehensive and sound to accomplish the desired result? The answer to these queries is simply that, no matter what has been deemed right or proper in the past, it must give way to the spirit of modern progress and development, and particularly so, in the effort to reach a higher standard of human justice. The question is *not*,—have we in the past been able to administer our criminal law minus this radical feature,—but rather, is this proposed innovation fundamentally

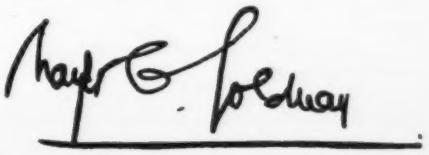
right and sound, is it expedient, is it necessary?

While it is true that the presumption of innocence attaches to the accused, that he must be indicted by a grand jury and tried by a petit jury, there can be no question but that this presumption is often swept away entirely by reason of the prejudicial atmosphere created prior to and during the trial. The fact is that civilization as a whole runs to the prosecution of the accused man with the enthusiasm of a pack of hounds in full cry after a fleeing rabbit. Mere accusation is enough to start the hunt. Society as a whole does not presume the accused innocent; it presumes him guilty. He himself must make the fight to prove his innocence. The unjust conviction and penalization of innocence is as much to be avoided as the escape of guilt, and this fact is nominally recognized by all civilized law—yet in many instances where a defendant has been acquitted he has been ruined by the cost of defending himself.

All of us frequently read and hear of the "prejudicial atmosphere" existing against an accused person, particularly in sensational criminal cases; of the unfair and biased attitude on the part of a district attorney; of the public disclosure from some mysterious source, of the secret proceedings before a grand jury; of the reversal by appellate courts of convictions, because improperly or unfairly obtained; of innocent persons who are actually serving sentences in state prisons. I venture the opinion that there are today men and women serving time for crimes which they never committed, due to the inadequacy or incompetency of their defense, the indifference of assigned counsel, or to their inability to properly present the true facts to the court and jury. In a book entitled "Twenty Years in State's Prison"—the case of Alfred Schwitofsky is reviewed with great detail, as showing the conviction of an innocent man and as a grave miscarriage of justice. The Board of Parole of the State of New York recently heard testimony on an application to pardon this man and it seems apparent from the evidence that a judicial error has been committed. The author of such book, who is a chaplain of the city prison, New York city, and of the Sing Sing prison, New York, states that he "can recall a number of such cases as having come under his notice." It is abhorrent to think that such conditions are possible in a civilized community, that there should exist even a breath of suspicion against the honor or impartiality of our judicial system. It is no more the function of the state to convict the guilty than to shield the innocent. The mantle of justice should be broad enough to envelop within its folds all those who need its protection—from the inception of the charge against an accused in the police court, through to its final culmination. I would suggest that a representative of the public defender appear for the accused and protect his legal rights, in every instance where the district attorney is represented, to the end that during the successive stages of the case the accused may be placed on a more equal footing with the complainant.

I do not now advocate the establishment of such office in the smaller communities—at least not until a successful administration of the office in the larger and more populous counties, justifies its creation generally.

The saving of one human life, the triumph of innocence, in the case of a single individual, the elevation of our standard of justice, through the medium of a public defender, would alone justify the creation of such office, or the expense of administering it. It has been contended frequently and with good reason, that "it were better for a thousand guilty men to escape than for one innocent man to suffer unjustly." A public defender would be a shield to protect the innocent, a bulwark of our liberties, a source of inspiration and strength to our more unfortunate brethren, an example to other communities to follow, proclaiming our citizens as the champions and exponents of true and real progress in the criminal law, and of impartial justice to the accused person, whether he be rich and powerful, or the lowliest criminal in the land.



The Supernatural Test of Law

BY DORR KUIZEMA

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A SCIENTIFIC workable definition of law, practically and finally deduced from innumerable treatises drawn from the school of experience, and entirely free from speculative suggestions, is Thomas Erskine Holland's: "A general rule of external human action enforced by a sovereign political authority." Yet the same great author recognizes, and his entire work on jurisprudence is based upon, the idea that law is not arbitrary, but, on the contrary, that the law of all nations has as its foundation certain general principles. It is therefore not surprising that, because a science of jurisprudence aims at discovering the few general ideas underlying the mass of human law, it must consequently take into account the notions of various thinkers of the past, and even of the present, who have referred these few general ideas to a final source which is superhuman. In spite of workable and scientific definitions of law, the question, Whence is the law? becomes now and again an important and interesting problem.

Men do at times become dissatisfied with the self-sufficiency of the practical. The practical workable definition does not after all answer why it should be so. It appears sometimes too arbitrary; and men have need to inquire after the reason for its being imposed on them.

It is furthermore significant that no scientific or philosophic treatise of law can do without speaking of a law of nature or natural law. Aside from drawing a distinction, and eliminating law as the order of the universe from the phrase, "law of nature," there remains this recognition in the phrase, be it ever so vague sometimes, of a natural, universal, and wholly unquestioned objective of reference of what the law should be. What now is this objective of reference? Reason? Sense of right and wrong? But where is its seat? In the individual soul, possibly? But if there, then the objective of reference is lost. Is it then in a universal soul that we find this test of law? If so, how and whence is it?

That there is a test of law needs only to be stated to be accepted. There simply would be no law if it could not be determined what and why it should be. Law is not merely posited, whether in Constitutions of government or for the daily general relations of man without grounds which all men can accept as governing its establishment. But what are these grounds, and how may we be certain of their being right? Is it a human test, or is it a test, although used by man, which is nevertheless not one discovered and established by him? It will be necessary to inquire into the nature of this test of law in order to determine that. What, then, is the nature of the test of law? and what does a closer examination of the test itself reveal to us?—are two main questions first to be answered, leading toward determining whether the test is supernatural. We shall have occasion, also, in this inquiry to see what the judgment of competent men has been on matters related to this question, as tending to throw some light on our investigation.

What, then, is the nature of the test of law? Paul speaks in his epistle to the Romans: "For when the Gentiles, which have not the law, do by nature the things contained in the law, these, having not the [written] law, do by na-

ture the things contained in the law, these, having not the law, are a law unto themselves: which shew the work of the law written in their hearts, their conscience also bearing witness, and their thoughts the meanwhile accusing or else excusing one another." Many early law writers have expressed a similar opinion of the source or test of law as expressed by this eminent theologian, and have denominated it the law of nature.

A Greek, Chrysippus, gives this exposition: "The common law, which is the right reason moving through all things, identical with Zeus, the supreme administrator of the universe." Hegel gives of law as a rule of action this philosophical statement: "The abstract expression of the general will existing in and for itself;" and Krause: "The organic whole of the external condition of life in conformity to reason;" to which Savigny adds his near metaphysical definition: "The rule whereby the invisible border line is fixed within which the being and the activity of each individual obtains a secure and free space." By this general concurrence of theologian, philosopher, and legal author in an idea concerning a source of law perfectly in harmony with the being and nature of mankind, and naturally adaptable to his wants, and corresponding with his needs in this universe in so far as his temporal existence is concerned, we find an approach to a test of law the nature of which suggests generality of foundation.

Now, if the human heart and mind, however, applies this test absolutely out of itself, why should not every individual have a different test of law? Even as it is, it is evident that differences in civilization, religion, moral training, and even notions of station or caste, have had such effects upon peoples and individuals that it has caused a decided difference in their institutions, modes of life, and also in their laws. Yet there must be, and is, a common plane from which all men can approach to view the law; for it is a fact that the history of law may be written, embracing all nations; and that its development everywhere may be noted from certain universal fundamental ideas of the conception of what men's relations should be. Consequently, there have developed universally accepted statements of the law.

It is a well-known expression that out of the facts, or, in other words, out of the relations of men, the law arises. It must, then, also be true that these relations are capable of regulation. We would almost say that the relations of men were anticipated by abstract legal justice, so that when concrete facts arose, there was at least a conception of law to apply to them. There is, then, a reason applied to relations which men generally regard as right for the regulation of the particular relationships. It is a reason of common acceptance, and one which men generally recognize as such.

The nature of the test of law is, therefore, not the application of particular reason, but of the common, the general, and universal. From where, now, is this universal application; or how do we arrive at it? And do we ever go out of ourselves for it? Law is an abstract science; still, we find the faculties for the abstract test right within ourselves. And we may well reason by analogy from the oft-quoted saying: "To know human nature one must know himself thoroughly;" that, to know well the universal reason for law, one must himself have a well-developed sense of justice. Nor is the universal-determining point of view of law merely the aggregate of the legal experience and learning of the world. That, too, has its place, but that aggregate is itself the result of the test, and becomes in time an important aid to it. Its great body, whereto all the world has contributed, and, most important of all, the underlying foundations of which all the nations have sought and upon which they have jointly built the great superstructure, is the best evidence that it has not come out of the particular reason, nor even out of the national reason and genius, but indeed out of the common reason of all mankind.

One thing does now stand forth of the nature of the test of law, and that is that it is the application of the common reason, whereto all men stand in communication and with the spirit of which they are all gifted, to the relations of men.

And, then, though it be granted that we possess the powers for this abstract test right within ourselves, and that we do not go out of ourselves for the application of reason to the facts, except in so far as we are aided in our reason by the expression of our fellow men as found in the great body of law produced by them, and which is constantly adding new expression, it is only possible because our own selves, with our powers of abstract test and reason, are kin to that of all the rest of our fellow men. The application of this test, therefore, not only should be, and must be, but is, in conformity with a sense of justice, *i. e.*, a knowledge of what is right or wrong under circumstances. It is that which is innate in us, and wherein lies the possibility of the practical application of reason to the relations of men, so that the justice thereof can be apprehended by the individual man out of his own self.

From this brief examination of the nature of the test of law, we have glimpsed some idea of what the test itself is, and are now ready for a closer examination of this test, in order to learn what it reveals to us concerning its supernaturalness. It is obvious that a test of law stands in close relation to law, and must be adaptable and adequate. A test, and that which is tested, must of necessity have much in common, otherwise the one would not be fitted to the other. Now, if the nature of the test is the application of the common reason to the relations of men, then the test must be this reason itself thus applied. But we must go further and seek an answer to the question, What is law ultimately? For we must consider that in our inquiry concerning the supernaturalness of the test of law. And how otherwise shall we know whether the test be equal to its task? The test must go as high as the law itself. We must, therefore, first inquire what has been considered of the source of law. Let us here also see what others have said about this.

Holland quotes Hooker as saying: "Of law there can be no lesse acknowledged, than that her seate is the bosom of God, her voice the harmony of the world, all things in Heaven and Earth doe her homage, the very least as feeling her care, and the greatest as not exempt from her power; both angels and men and creatures of what condition soever, though each in different sort and manner, yet all with uniforme consent admiring her as the mother of their peace and joy." This exposition covers law as the order of the universe as well as that governing the relations of men, and refers all to one source. While the practical distinction is not made between the two here as is now invariably done, there is this truth to be found in it, that it recognizes their close relationship because of the same source.

We have alluded to the law of nature as a satisfying source to law writers for the law governing human relations. This view, as Holland again observes, finds general acceptance and expression in the Roman lawyers. He quotes Cicero as follows: "Law is the highest reason implanted in nature, which commands those things which ought to be done and prohibits the reverse. The highest law was born in all the ages before any law was written or state was formed. We are by nature inclined to love mankind, which is the foundation of law. Law did not begin to be when it was put into writing, but when it arose, that is to say, at the same moment with the mind of God." Jeremy Taylor speaks of the law of nature as follows: "The law of nature is the universal law of the world, or the law of mankind, concerning common necessities, to which we are inclined by nature, invited by consent, prompted by reason, but is bound upon us only by the command of God."

There are many more expressions of a similar nature that could be quoted from the writings of such men as S. Thomas Aquinas, Grotius, and others, showing the same conception of the source of law in a supreme, and fixed decree existing in itself. A significant thing deserving mention is that on the continent the Austrian and German Codes provide in cases for which the law makes no provisions, that the courts are then authorized to decide in accordance with the principles of natural law. And the International Law Code of Grotius is based upon this natural law. These things are evidence of the recogni-

tion of the universal acceptation by mankind of a source of law superhumanly fitted to man from which general principles for human action may be naturally drawn.

Now, although the use of the term, "natural law," has been subjected to the criticism that it fails to make distinction between moral law governing all of men's actions, and that human law which regulates only his external acts in the human relationship, however, when we are inquiring concerning the ultimate test of law, we cannot help to recognize the close relationship of the two in the same ultimate common and high source for both. For we are now dealing with the ultimate, and must deal with it. In that realm distinctions between the same essential class flow together.

"Law," then, as Cicero well says, "is the highest reason implanted in nature." This would make our law ultimately identical with what we have denominated its test. We have, then, the highest reason applicable to the relations of men, tested by equally high reason. It is a naturally adaptable and perfect test, because each is the highest, therefore, the absolute reason in which they run together. The absolute is the ultimate; and so far we must go with our test and the tested. For there can be no complete, thorough, and all-exhausting test until and unless both that to be tested and the test are resolved in their natural common element; than which there is nothing higher or more possible, *viz.*, the absolute common element for both. And this for law and its test is the absolute reason.

We have now an absolute test, howbeit erring man makes use of it. It is a test not established by him, but one which he must use because there is no other. And he is as much an instrument of that test as that the test is used by him. Man is a seeker after truth, and tests each new possible truth by the highest reason for it, and by the truth previously found. But man can only find truth. He does not establish it. It is there in the universe. The test of law is an absolute necessary truth or reason for regulating men's external relations. It finds its response and acceptance in our reason. When found we can do nothing else than accept it. It has become a reason and law for our reason. It is there above man, above men, above their common conventional reason, above their so-called natural law, because it determines even that. It is supernatural.

Let us now pursue this subject farther by an inquiry concerning the working of this test of law, to see how its supernaturalness is borne out. How does this test work? What is its object and function? Is it to guide reason in fixing rules for the regulation of human relations? But why regulate?

We have thus far considered law only in the abstract, but let us call to mind that there would be no need of law except that there are strained relations among men to restore to normal. There are, therefore, wrong relations to be made right. There is right and wrong. A right, generally, among humans is "the capacity of one man of influencing the acts of another, by means not of his own strength, but of the opinion or the force of society;" and a legal right, to use the same author's — Holland's — definition, is: "The capacity residing in one man of controlling with the assent and aid of the state, the actions of others."

The opinion or force of society in the general right becomes the assent and aid of the state in the legal right. Both require the sanction of the common reason; yes, of the highest reason; yes, of absolute reason,—put to the test of absolute reason, and made certain, secure, and immutable.

The state in its positing of law is under the same guidance of this supernatural test. This must now be obvious. It is therefore that we have one law for all men, fixed and certain. Men know the right, and may know what reason, what law, the right demands. They therefore sue for their right; and the courts, guided by this same supernatural test, enforce it to them. All men are implanted with this universal sense of right and wrong. Therein lies the base of correspondence with this supernatural test of law; therein lies the foundation for the capacity to use this test, and to be guided by it, in our relations with men, and to deduce right rules for those re-

lations. Now, whence this sense of right and wrong? Whence the relation between it and the supernatural test of law and morals? Has nature implanted the one and established the other? There is no question but that they are natural to us; for both are harmonious with our being and existence and our every day needs in the use of them. However, another question, Whence the determination, the absolute inevitableness for it all? Where is the seat of all this finality, wherefore also of our law and our test of law? There we are balked in our inquiries; there is the great mystery. There we lose our grasp; for everything tangible is gone; we can no longer analyze; nor synthesize; we are in the realm of the supernatural, where there is but one eternal immutable absolutely fixed decree, where all that is, is so because it is so,—because it is the will of God.

Do men recognize generally that the test of law and of morals, its close relative, is supernatural? and do they act upon it? If this could be established, the fact would be quite readily believed. Naturally, because it would be a concrete proof. But it is not surprising that men do not consciously act from such a belief. As seen, he has an innate sense of right and wrong, which affords him a practical ready test. He has reason at his command. Then, too, at this day and age, we have a great body of law which we daily use and apply; and we need merely, according to a hazy, superficial view of it, reason by analogy from the great volume of decisions, historically and evolutionarily developed, to daily recurring and occurring circumstances. It is just that which has caused men, and here especially the lawyers, to lose sight of the few general ideas underlying the mass of the law, and therefore of the reason, right, and truth which animates the whole.

Furthermore, our practicable, workable, intensely scientific definition of law nearly divorces it from morals, of which it is actually but the outward act with which the state alone concerns itself. But that this is wrong becomes in our more intensely social age daily more evident. Let a man ask himself, What is morality, and how is it to be accounted for? Nowise second to religion, it is one of the greatest mysteries to be accounted for,—that men should be endowed with a sense of right and wrong! Can it be accounted for in any way by mere nature?

It is the object of the application of law that justice be done. That must bear to be approved in equity and good conscience, the latter that faculty for choosing between right and wrong. That faculty which checks man in the rush to make a beast of himself. Nevertheless, also, that faculty which has been in all ages by divergent spirits of the times often terribly misguided. How great the need then of a supernatural test for right relationships; for an all-determining wise will that in the long run also again guides man's conscience aright, and corrects his reason by its absolute decree. Our theory and practice of the application of law demands the supernatural test! What other would answer and be adequate?

Having come to this conclusion, it behooves men to seek for the revelation of that test; of the supernatural will which has established it; and for the absolute truth decreed by that will. Where now find that? It is no doubt true that we have a partial revelation of it in our common sense of right and wrong; in our common conscience; in our common reason. But where we have recognized the need and existence of a supernatural test of law, we have likewise seen the inadequacy of our own faculties and the fallibility even of our consciences. There is still another revelation, widely accepted. It is the Christian religion which teaches the existence of a supernatural source and test of law, and is an additional proof thereof.

Thus we have reason, conscience, morality, religion, and the consequent spirit, which actuate men in their daily relations and in the application of law to them in one harmonious whole, bespeaking and requiring a supernatural test of law, and inevitably compelling men to seek its guidance.

Dorr Kuizema

The Law's Attainment of Intellectual Justice

BY WILLIAM W. BREWTON

Of the Fort Valley (Ga.) Bar

[Ed. Note—This is the second paper in Mr. Brewton's able series of philosophical articles. His essay on "Justice and the Technique" appeared in September. The next article will be entitled "Lex and the Moral Analytic."

IN a recent discussion entitled, "Justice and the Technique," the present writer undertook to show the fallacy of expecting the Law to be absolutely just, and that it is justice only in a maximum and immeasurable degree which is attainable through the Law. It was seen there that human ability to attain falls short of the desired attainment in the realm of the Law as it does in all other realms, and that it is only by the means which makes impossible the desired extent of achievement that the highest degree possible is achieved. The proof of these propositions inevitably led to the conclusion that much of what is to-day termed criticism of the unscientific status of the Law is the merest superficiality, and that the majority of modern critiques on this subject are laid upon a foundation barely stable enough to support the absurd superstructure of conclusions built thereon, to say nothing of its withstanding such pressure as may be brought to bear by means of rigid logic. Specious censure, revealing a want of knowledge concerning the true nature and purpose of that which is censured, will in the long run avail nothing in favor of the light-weight critics who seem to presently flourish.

It was seen, also, in the above treatise that it is for man to determine what reasonable improvement shall be made of the Law. Many instances of apparently unavoidable application of slight injustice, and all instances of the application of gross injustice, are, in the light of modern civilization, unnecessary, and such a defect in the Law can be overcome. We may assert this with assurance, because of the fact that most men to-day have a fair sense of right and justice; and we may state, also, that wherever there is a case of clear wrong done by reason of applying a law as written, it has at once become man's duty to investigate that law and remedy it. But whenever such a case occurs, there was assuredly an existing fault chargeable against the legislator at the time the law was made in the form in which it is found thus unjust. We can conclude, then, that the careless and unappreciative legislator is responsible for plain and emphatic injustice found in the Law. It is not to be supposed here, to be sure, that all cases of plain injustice are the result of faults of the legislator. They are also attributable to the judge and the juror, and whenever there is a misapplication of a good law, and an evil result follows, the responsibility lies somewhere in the court, of course. Injustice as a result of bad Law, and not of any misapplication of the same (a court necessarily having to apply a law as it is found created), is that subject-matter to which we direct our attention here, inasmuch as the Law's becoming more and more just depends upon its creator.

The fundamental idea or judgment of Right and Wrong is not dependent, for its formation in the human mind, upon empirical *data*. Inasmuch as we have in mind the moral conception itself, we may assert that, instead of it being empirical, it is pure. The simple moral idea of justice is not dependent upon perception of representations furnished by experience; it is the conception of repre-

sentations *a priori*. It is not necessary to pursue a metaphysical extenuation of this point to establish it here. For while, of course, experience has led men to declare wrong to-day what was considered right in time past, and *vice versa;* yet it must be understood that anything is right or wrong in relation to the time, circumstances, and conditions under which it is experienced; and that when experience changes that to be judged of, that is to say, when by successive stages of experience anything appears in a new light, or in a changed relation to other things, it may be judged of *a priori* with a different judgment than that passed upon it in its original status. But this does not mean that man's *a priori* conception of Right and Wrong has changed (though it is not necessary here to argue that it does not); it means simply that that which demands the judgment is constantly changing, making necessary an entirely different, and not an altered, judgment. For instance, if the sacrifice of human beings to heathen deities represented itself to the mind of the heathen as it does to that of the Christian, the act would be judged of *a priori* wrong by the former, as it is by the latter.

Then man possesses *a priori* a conception of Right and Wrong,—which is but what is commonly understood as the *moral sense*, but which is more properly termed the *moral analytic*. It is when the Law is the expression of this conception that it satisfies justicially the human mind. And it is justice embodied within the Law in this status that we term the intellectual. But in order to properly understand the nature and value of justice in this sense, we lay down for investigation the following *dictum*:—

The Law becomes intellectually just upon conforming to, and when it represents, the Transcendental Ideal.

Progress in all history is but the advance from the practical and imperfect towards the perfect and ideal. Man is constantly striving to adjust his operations to some standard of perfection within his own mind. He judges of what his work is according to what he thinks it ought to be. Should it occur that his labor exactly conforms to his ideal, his mind is at once satisfied; and it is this mental satisfaction to which he is constantly striving to attain. This view is true in case of the Law, which satisfies the mind of its creator only when it is the expression of his Ideal of perfection. This Ideal, to be sure, can never be said to be anything but Right; for inasmuch as man is continually progressing towards truth, and inasmuch as the goal cannot be contrary to the nature of the progress, the inevitable end which is approached in the case of the Law is Justice and Right. Then the Ideal of the Law which satisfies the intellect is an *a priori* one; that is to say, it is Transcendental.

The legislator, then, performs a process of mental introspection in endeavoring to embody intellectual justice in the Law. He seeks not among *data* drawn from experience for his pattern of measurement; but simply brings to bear, as the determining power, his pure conception of Right. And when his law represents this conception flawlessly and completely, it is then satisfactory to the intellect, holding the form, as it does, of every principle held by the legislator *a priori*.

Now, we have said that the value as well as the nature of intellectually satisfactory justice should receive our attention. The Law's purpose is to be beneficial, helpful, remedial, and useful; and it is not worth our time here to indulge in wire-drawn theories and conclusions as to the nature of that whose worth or value does not interest us. Then, we should ascertain whether or not the type of justice discussed is worth anything, and, if so, how much.

Apparently that which is to the mind just and right, that which in its very essence and simplicity is morally correct, should be capable of universal application in the realm of the Law, which is the science of administering justice. This appears to be true even when we consider that many laws have nothing to do with individual or personal rights, but are merely instruments of policy. For though a law may not be created to protect or remedy, it is yet founded upon justice directly or indirectly sought to be done for society present, past, or future. Justice, however slightly apparent, is always present in the Law (it not being

necessary, of course, to discuss here that we do not mean Law maliciously made). It appears at first, therefore, that every law should be intellectually just. For, it would seem, the pure conception of Right should never fail to be embodied in any law.

However, this view is an illusion incident to confounding justice judged so by the intellect with justice determined in the mind so because of empirical conclusions. If a law is declared to be just because it represents conclusions of right drawn from experience, it is not intellectually just, but empirically so. For a law to satisfy the intellect, it must represent principles of pure conception; and hence,—

Intellectual justice is unattainable when it is to be embodied within a law whose right is incapable of being judged of a priori.

At the outset we stated that man possesses a pure conception of Right; but it is not necessarily true that all determinations of right are pure. As indicated above, certain of them may be, and are, empirical. That is to say, it is because of experience that in some instances we declare a law to be right and just. What laws are established upon a pure judgment, or upon an empirical one, it is impossible to say with absolute certainty. Various phases of the same law, even, may be based upon different judgments—so far as the complete law in the sense of a statute is concerned.

But so far as concerns us here—the feasibility of the Law's being intellectually just—we are enabled to arrive at very satisfactory conclusions. For instance, a law which operates very indirectly, or which portrays within itself not an end, but simply a means to an end, we may safely assert to rest upon an empirical, and not a pure judgment of justice. A law, for example, requiring the registration of public documents or valuable personal paper, or requiring the prosecution of a prisoner, if at all, within a certain limit of time would be based, mostly or entirely, upon a knowledge of right or expediency drawn from experience. It would be just the opposite, however, in the case of a law requiring the foreclosure of an unsatisfied mortgage, or making compulsory the presence of witnesses, or prohibiting the deprivation of life, liberty, or property without due process of Law; which would be based upon a clearly *a priori* conception of Right. Usually, also, laws for acts *mala prohibita* are empirically just; whereas those for acts *mala in se* are purely so.

A great number of laws, therefore, are just because they conform to what man has learned by experience is just for applying to such cases as arise under them; while others are just because they spring from a pure, moral knowledge of justice and Right. But as man is unable to satisfy his *a priori* mind as to justice by making a law conform to his experiential knowledge of the same, so he is unable to make a law whose justice can be judged of only from experience, conform to his *a priori* mind. Intellectual justice, then, can be attained only with respect to those laws whose justice is capable of being judged of *a priori*, and is consequently unattainable in all other cases.

Abstract discourse upon any subject has a very subtle tendency often to lead the investigator entirely away from the true nature of that which he investigates. It is very easy here, in moving upon a plane above the ordinary and common, to disregard the primary purpose of the Law, which is a very practical one. The Law, to be sure, is not for affording material to the theorist to speculate upon; it is for the supplying of beneficial means to mankind, for the guarantying of right, justice, peace, and order. And it is not material how these results are attained, if they are attained. Man cares very little about what type of justice is being meted out to him, if he is being benefited anyhow. What concerns him is the securing of the benefit. Consequently, it is that kind of justice which is the most beneficial that man desires and strives to establish. It is highly pertinent to determine, therefore, whether or not intellectual justice is that type the most efficacious, and whether or not any other kind supersedes it in this respect.

Now, the practical and corresponding impractical are constantly at war. The idea often appears different after it is

applied from its appearance before; and the demonstration often varies from the hypothesis. It is for this reason that man usually discredits theories. He demands a practical showing at once, and will be convinced, often foolishly, by nothing else. Yet, as we have stated, it is for beneficial results alone that we seek; and we care nothing for any kind of justice, whatever may be its conceived perfection, which is incapable of being justicially applied; and therefore,—

Intellectual justice is undesirable when its operation conflicts with the application of practical right.

Justice to the pure mind is not necessarily that justice in the Law which is the most beneficial. A law by conception purely just may be inexpedient to apply by reason of man's status of civilization being unready for its application, or some other empirical, and consequently inexorable, condition. If conditions in the world are such that expediency is the only consideration that may be properly entertained, *a priori* justice is out of the question. For justice in an *a priori* sense being ideal and usually distant, and experience being practical and imminent, that type which is best adapted to the latter is used. Now, justice purely conceived is not always this best type; indeed, it is very often the opposite. To illustrate, a law allowing convict prisoners to wear civilian clothes, and to carry an ordinary, civilian appearance, is a just one to the *a priori* mind, but it would be an unjust one to the practical mind, because unjust to society as a whole in practical application; that is to say, while transcendentally we conceive nothing unjust, even to society, in allowing the convenience and comfort to prisoners incident to this law, yet empirically we at once know that it would work injustice upon mankind,—in that protection to society would be jeopardized. Therefore, the *a priori* conceived just law, in this case must not be created, because it would be harmful, instead of beneficial, in practice.

Again, a law establishing the right of eminent domain is often *a priori* unjust, but practically just. For in many cases we cannot conceive transcendentally of the justice of a law requiring one person to, voluntarily or not, exchange for value his property for the benefit or use of another, even society; inasmuch as our knowledge of the right of such a law most often comes to us through experience. However, the law of eminent domain is a very just one practically, and it is evident, in many instances, that this law is an indisputable necessity. Its necessity at any time discards the desire to supplant it by an *a priori* law which is incapable of remedying the evil that the practically just law covers. And thus again it is the practical law which is created, instead of the transcendental. There may be cases of application of the right of eminent domain which can be judged of *a priori* just; and it is not our contention that there are not. We know there are examples to the contrary, however, which is sufficient in establishing the proposition that the practical law must inevitably supersede the transcendental one, inasmuch as the end of the Law is to benefit.

In the two illustrations drawn we have shown how the *a priori* law may conflict with the practical one; that is to say, we have shown how while the pure mind may be satisfied with the content of a law the practical mind may not be. And inasmuch as it is empirically chiefly that we know man's need, it is empirically that we frame most of our laws. The legislator, then, should spend his time studying the condition of the world and what is best to apply to it by Law, and not in proceeding introspectively to ascertain the content of his *a priori* mind. Whether or not a law would be beneficial is the first and important consideration; and if it occurs at the same time that the law is *a priori* correct, well and good; and if the law is not *a priori* correct, well and good also; for the Law is not created to satisfy the mind, but to perform benefit. And it is here, for one place, that we may expose the superficiality of some modern critics,—the doctrinaire type. Obtaining the sanction of their reasoning powers to some theory concerning the Law, they at once launch an ultimatum as to what defects are prominent and what remedies are present. Whether or not the remedy is practicable, or even possible of application,

is overlooked altogether. It often occurs, also, that the very defects the critic has just observed were long ago remedied to the highest possible extent by some careful and discerning legislator. Many modern critics seem to indulge in the illusion that creation and application coincide,—a thing which very seldom occurs in a perfect degree in any sphere of science, and which is never known to do so perfectly in the realm of the Law. If a legislator creates a law without considering whether or not the law can justicially apply, he has proceeded upon an unwise plan. He should look first to the capability of the law to perform benefit, right, and justice. And when he does this, he will very often find that a particular law is not worth the creating, its content falling short of the standard by which he is to measure.

Justice to the intellect is, therefore, often undesirable. This is true when, as we have shown, its operation conflicts with practical, the only practicable, right. It is practical and beneficial justice alone which man desires in the Law, and for which he creates it.

It may now well be asked what value, if any, has justice transcendentally judged. That the type of Right so satisfactory to the pure reason should have no place in the affairs of man is not an acceptable opinion. Also, it appears to us absurd to suppose that the conception of Right *a priori,* and therefore purely indisputable, is a consideration always to be disregarded. To say the least, we desire the sanction of the pure mind whenever it can be properly had; and ideal justice, it appears, has some office in the realm of the Law. All other necessary and primarily important considerations satisfied, the satisfaction of the intellect should be attained. A greater degree of security for the Law would result from such a course. Permanence as the science of administering justice would be greatly enhanced by constantly measuring the Law by the demands of the intellect wherever practicable. As complete a status of perfection as possible is desirable for the Law; and thus,—

Intellectual justice, whenever attainable and desirable, is efficacious for the improvement of the Law's Technique.

The greater the number of instances arising under a law to which it will justicially apply, the more merit is ascribed to that law. No two cases arising under it being known to be exactly alike, it can never be said that any one has been exactly covered by the law. The necessity, then, for the legislator to be careful in molding his law so that it will apply as diversely as possible is evident. The improvement of the Law as a science is desired. And wherever the pure reason can operate without hindering the practical right, a supplementary force is added to the Law by which, inasmuch as the *a priori* mind is universal, a higher degree of universality of application is afforded. The Law as a system, its Technique, is thus greatly aided by having recourse to the *a priori* mind for the determining and use of those universal rules which are necessary in making the Law more generally applicable. In a degree, then, there would be a lessening of the modern censure that "the technicality rules." Let it not be supposed for one instant, however, that this so-called rule of the Technicality will be done away—never. It is this principle which affords the maximum of applicable justice in the Law; and it is not even desired, if it were possible, to remove the Technicality. The Technique of the Law, and consequently the Technicality of its application, may be improved, but not annihilated, by turning on the searchlight of the *a priori* mind. So far as annihilation is concerned, it is both impossible and undesirable.

Careful legislation, performed by cautious legislators, is the means to an approximately perfect Law,—and it is the only means. Much is to-day required of the Lawmaker,—great ability to perceive and conceive. But all men are concerned,—*for if the merit of the Law is dependent upon the Lawmaker, the merit of the Lawmaker is dependent upon his elector.*

William H. Brewster.

The Return of Herndon Earle

BY WM. HAMILTON OSBORNE

Of the New York and New Jersey Bars
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PLINY KERN became suddenly and unaccountably excited. Before his office door there stood a motor car. Now, motor cars in that immediate vicinity were not unusual. The store which now did duty as Pliny Kern's law office had at one time been a millinery shop, and ladies of opulence who had forgotten frequently plunged into Pliny's sanctum and implored him to build them hundred dollar hats. So Pliny's heart and nerves no longer fluttered at the sight. But this automobile was different. Pliny knew this car. He knew its occupant, if it held one, meant law, not *lingerie*. For the lady of the house to which this car belonged did all her shopping in New York. Pliny opened wide his door, and stepped out to the curb. The car was a limousine. He looked within. Save for the chauffeur, the car was empty. The chauffeur nodded and touched his hat.

"Mr. Dalrymple would like to see you, sir," he said.

"I'm here," said Kern, with alacrity.

The chauffeur shook his head. "He would like to see you at his house. I'm here to take you up."

"I'm with you in five minutes," returned Kern.

He spent five minutes in his office, doing nothing. The street was full of passers-by. It was good business to let them see the car of D. J. Dalrymple—a $10,000,000 man—standing before his curb. Then he closed his office and entered the limousine. As he did so he shook his head. He was a young man was Pliny Kern, but he had old ideas. He had ideals,—Webster, William M. Evarts. He felt that times had changed—that he lived in the wrong age. Then, clients came to lawyers' offices; now, lawyers wait on their clients. Then, lawyers had been masters; now they were but servants—sometimes slaves. However, a $10,000,000 client was worth having. He pocketed his pride. He saw Daniel J. Dalrymple in his house.

"Now, young man," said Daniel J., "I've sent for you to draw my will. I've heard that you were pretty fair on wills. So I sent for you. Sit down."

Pliny Kern sat down in the easiest chair that he could find. He felt at ease. He had a better mind than Daniel J., and that was all that counted. He crossed his legs. "Tell me about it," he suggested.

Daniel J. Dalrymple shook his head. "Not till we've agreed on terms," he said. "Now, how much are you going to charge for drawing up my will?"

"Mr. Dalrymple," returned Kern, "have you never had a will before?"

"You bet your sweet life I have," said Dalrymple, "and I'm going to change it quick as a wink. I made that will just after I was married."

Kern nodded. He knew all the facts. Daniel J. Dalrymple was a wise man,—a cautious man. He had a powerful intellect. And yet his heel was the heel of Achilles,—it held a vulnerable spot.

He had married an actress—Minette Martini—but a few short years before. When he married her, he gave her—paid her is perhaps the better word—$100,000 just for pin money. She used it for pin money. She, to whom $100 a week the year round would have been a fortune, spent this hundred thousand in two months—and spent it on her friends,—male friends at that. That was only a starter. Minette kept on. Everything that a wife ought not to be, she was; everything that a wife should be, she was not. She was a fool. D. J. was an old man. Her proper game would be to

humor him, at least, until he died. But not for one instant could she forego her pleasures. She went the pace. She was clever with a sort of feline cleverness—or you might call it serpentine. She wriggled somehow out of every bad scrape that she got into. She banked well and wisely upon one thing,—that Daniel J. Dalrymple would cover up these things rather than expose them to the world at large.

The world knew all about it, nevertheless, and so did Pliny Kern. In a flash he silently reviewed this disagreeable history of the past few years. He nodded to D. J.

"Who drew your will for you?" he asked.

"Sharpe drew it," said D. J., "and Sharpe's the best man in town,—he's a clever counselor, is Sharpe. But, Sharpe charged me $1,000 for drawing up that will. And so this time I sent for you."

Pliny Kern smiled. "I think," he said, "that I'd be satisfied with that."

"Not on your life," retorted D. J. "You'll be satisfied with $50. That's why I sent for you."

"I'll be satisfied with $250," returned Kern.

D. J. scratched his head. "I'll split the difference with you," he exclaimed.

"Done," said Kern, "and now let me see that will."

He smiled as he looked it over. He smiled as he thought of D. J.'s tribute to Sharpe as the best man in town. He knew why D. J. held this opinion,—that was another bit of history. Sharpe had once collected for D. J. a hopeless claim of $40,000. He had done it by blackmail, pure and simple. But he collected the whole sum—with compound interest. As a collection lawyer—and by the way, good collection lawyers are as scarce as hen's teeth—Sharpe excelled. Also, he was a second-mortgage man; he was a shark. But what he didn't know about wills would have filled a library. His ignorance, like a sore thumb, made itself painfully evident all through this will.

"You understand, young man," said D. J., "that I ought to have Sharpe—there's a lawyer for you. But I'm saving money on you. I guess you'll fill the bill."

Kern grinned sardonically. "Delighted that you think I almost measure up to Sharpe," he said. He felt like getting up on his hind legs and telling D. J. what the bar thought of Sharpe. Sharpe was a crooked blunderer, that's all. Yet, he had collected forty thousand odd dollars for D. J.,—therefore he became at once a jurist.

He finished reading. "Now, Mr. Dalrymple," he said, "what do you want?"

Dalrymple snorted. "I want to cut her off with $20,000,—that's what I want."

Kern mused for awhile. "You're a rich man," he said at length, "this woman is your wife. She will be able to prove that you are on unusually affectionate terms—perhaps—."

"Not in a thousand years," snapped Daniel J.

"Assuming you are right, we must still be careful—tell me."

"Counselor," said D. J., "you may be pretty sure that I'm not going to blacken this woman's reputation too much—for if I blacken hers, I'll blacken mine. I'm not going to show her up. But I'm going to cut her off with $20,000. She can live on that."

"Suppose," said Kern, "that we send for Doctor Nicholson."

"What for?"

Kern shrugged his shoulders. "He's a nerve specialist and a recognized psychologist—and the expert at the asylum. Beside, he's your family physician. Before you make your will, I'd like to have him look you over. I want him to know that you're all right. Anybody in the county will believe George Nicholson,—particularly the county judge."

"He'll charge me a fee," said D. J.

Kern grinned again. "I'll pay him out of mine," he said.

D. J. sent for Nicholson, and he came. Nicholson put him through all sorts of mental paces. He found him sound as a dollar. Kern took his own turn at examination. D. J., without the aid of books, went over all his holdings; recited his family history; recalled the dates of deaths, births, marriages; gave every proof of testamentary capacity.

Kern finally was satisfied. "You leave Minette Martini Dalrymple $20,000," he remarked, "who gets the rest?"

"I've practically told you," said D. J., "little Ethel Ames, my niece,—the only living relative that I've got left."

"You told me where she lived."

"Denver, Colorado."

"When did you last see her?" queried Kern.

"Not," said D. J., "since she was a kid."

Kern nodded to Dr. Nicholson. "Not much undue influence there," he said.

Nicholson shook his head. "Not unless this Ethel Ames is an adept at telepathy," he resumed, "if she is, who knows. . . ."

Kern laughed. "Not much chance," he said, "across a space of over a thousand miles."

"Oh, yes, there is," said the physician seriously, "space is not important."

"You don't mean—," began Kern.

"Ah, my dear fellow, but I do," said Nicholson, "nothing is more possible than that—nothing truer—" he tapped his forehead. "My dear boy," he went on, "a thousand years ago muscle was the controlling force—the big thing—the thing that swayed empires, if there were such things. To-day it's mind—a baby touches a button and by wireless sinks a whole navy of battleships. Mind—everything is mind. There might be influence here—even here."

Kern laughed. "I'll take a chance on it." He said, "Mr. Dalrymple, I'm going to draw your will."

In due course he drew it, and had it executed—taking the precaution to have the physician present. It was a carefully drawn, carefully worded will. It gave sound reasons, susceptible of support—it gave conservative reasons—for cutting off Minette Martini Dalrymple. Kern spent $2,500 worth of thought and labor on that will.

"Mr. Dalrymple," he said, "I'll back that will against the world, the flesh, and the Devil."

"You—you're sure it's all right?" asked Dalrymple.

"Positively."

"I—I'd like to have Sharpe read it over," said D. J., "but he'd charge me half a hundred for it. I guess I'll take your word for it, young man. Here's your check. Good day."

It was two years later when the doctor's car drew up before Kern's office. Doctor George Nicholson got out. He strode heavily into the office. There were deep lines about his face. He was clearly worried.

"Kern," he said, as he sank into a chair, "Daniel J. Dalrymple is dead—just died this morning."

"Sorry," said Kern, "I rather liked him. Tell me," he added, "did he die a natural death?"

The physician started and glanced narrowly at the lawyer. "Tell me," he exclaimed, "why did you ask that?"

Kern shrugged his shoulders. "I don't know," he said, "only this she-devil that he's married to . . ."

"Was there nothing else in your mind?" the doctor asked.

"Nothing else," said Kern, "but what is the fact?"

Nicholson wiped his forehead. He was laboring under some excitement. "Oh, as for that, D. J. died a natural death. This woman may be bad—she's not a murderess. He died of age, old age." The doctor shot his forefinger toward the lawyer.

"Kern," he said, "you know what you were thinking of when you asked that question—you were thinking of Minette Martini's first husband,—the actor, Herndon Earle."

"Herndon Earle," mused Kern, "I'd almost forgotten. She was the wife of Herndon Earle. Wasn't there some . . ."

"There was," returned the doctor grimly, "Herndon Earle was shot to death—shot to death right here in town."

"Right," said Kern, "I remember now—it all comes back—who shot him?"

"Not the woman," said the doctor, "some rival possibly. You remember the circumstances—Herndon Earle had broken down—his company was stranded here—you remember his slumping into innocuous desuetude in a few months—a few weeks—his frequenting of poker dens—and then his death—in some back alley. And then she met D. J. Dalrymple—God knows how. I don't."

"I remember everything," said Kern. He sighed. "I bear them no malice,"

he went on, "let D. J. and Herndon Earle rest in peace."

Nicholson wiped his brow again. He gazed steadily into Kern's eyes.

"Herndon Earle," he said slowly, "did not rest in peace. Herndon Earle has come back to earth."

Kern was startled. "You mean—," he began.

"I mean what I say," went on the doctor, slowly; "I mean that Herndon Earle, Minette Martini's former husband, has returned."

"Then," stammered Kern, "he wasn't shot?"

The doctor tapped the desk with nervous fingers. "He was shot," he answered, "I know it. I attended him. I saw him die—I saw him buried. He died the death. Now, he's come back."

"Not in the flesh?"

The doctor groaned. "There's the whole muddle," he exclaimed, "but I know. . . . No, not in the flesh—in the spirit."

Kern glanced sharply at the doctor. "Are you crazy, man?" he cried.

The doctor drew himself up. He even smiled—a grim smile of superiority. "Crazy—not a bit of it," he answered, in a matter of fact sort of way, "I'm not crazy—I've seen Herndon Earle in the spirit—other people—one other man at least—say he came back in the flesh."

"Maybe he did come back in the flesh," said Kern.

"Never in God's world," exclaimed the doctor, "but he came back—to two people—only two. I was one of them."

"How long ago was this?"

"About three months ago."

"What," said Kern, "do you suppose he came back for?"

"I know what he came back for," returned the doctor, "he came back to talk to D. J. Dalrymple."

"How do you know that?"

"Because D. J. saw him—only, this is where we differ. D. J. insisted that he saw him in the flesh."

"Anybody else see him?"

The doctor shook his head. "But," he explained, "that was natural. It was natural that he should appear to me. Temperamentally I am a medium. D. J. was ill—not too ill—his mind was vigorous as ever—but a sick man is always in a receptive mood. That is why he saw Herndon Earle—only he insists it was Earle in the flesh—I know it was not."

"Why did he think that?"

"D. J. said," the doctor answered, "that he shook him by the hand—that he felt of his arm—that Herndon Earle sat by his bedside not 2 feet from him—that once Earle touched him on the shoulder. He depended not so much upon the evidence of his eyes, but upon his sense of touch. He had known Herndon Earle, even before Earle lived here in town—and to him, it was the real Earl back in the flesh."

"What did Earle tell D. J.?"

"Nothing—save that he was Herndon Earle and that he was alive."

"Why did he tell him that?"

The doctor shrugged his shoulders. "Let me tell you all I know," he said; "first, feel of my pulse. Assure yourself my mind is steady—assure yourself I tell the truth—because I know—."

"Tell me," said Kern, a smile of respectful incredulity playing about the corners of his mouth.

"One evening," went on Nicholson, "I left D. J.'s house. He was in good shape—physically weak, but mentally strong—remarkably strong. I left his house on foot and strolled down the street. You know the 9,000-candle-power arc light on the corner near his house? I stopped there to read some memo. in my book. And when I'd finished reading it, I still stopped there for another reason. Herndon Earle was coming along the street. No, there was no mistake about it. It was Herndon Earle—you remember him. Long coat, peculiar gait, jaunty air—curious tilt of the hat. It was Earle. He swung his cane in his old peculiar way. It was Earle—I knew him in a moment. . . ." The physician paused. "Only—this I couldn't understand—he seemed older by some years than he was when he was shot to death—older—I can't quite make that out. But it was Earle. I know. I watched him come, I watched him as he passed me—and as he passed me he glanced, just once, into my eyes—I could have sworn he nodded. Then he went on, and I watched him as he went."

"Where did he go?" asked Kern.

The doctor lowered his voice. "Up the brownstone steps of D. J.'s house. I turned and followed. I saw him touch the button. I saw the door swing open, —saw him swing into the house and disappear. I, too, darted up the steps and rang the bell. The butler answered—the same man who had let Earle in.

" 'Who was that man you just let in?' I asked.

"The butler was dumbfounded. He had let no man in, he said. He thought he had heard the tinkle of the bell, and he had opened the door. But there had been no one there. I told him sternly that a man with a long coat and a cane had entered. But he had seen no one, heard no one. I went in the house, and went up to D. J.'s suite.

"In the anteroom Miss Flagg, the nurse, was just waking from a nap. I started toward D. J.'s door, but she listened and said he was asleep.

" 'Asleep nothing,' I told her, 'there's somebody there with him; listen!'

"I opened the door upon a crack and listened. I could not see, but I could hear. There's no doubt about it, Kern. Herndon Earle was in there talking to D. J. I know Earle's voice—you recall it too—the nasal twang—not unpleasant, but distinctly marked—the rumble in the nose—. It was Earle—."

"Did you go in?"

"I did not. It was not mine to disturb Earle's spirit. He had a mission to perform. I waited. Finally Miss Flagg went in, and said—when she returned—that Mr. Dalrymple was talking strangely. Then I went. Earle had disappeared. Miss Flagg had not seen him—no one had seen him save D. J. and myself. D. J. was not at all excited. He told me calmly enough that Earle had come back—that he was not dead, but living. There was not a quiver in his voice. He was as calm as you are now. Then I told him what I knew. Laugh? He laughed enough to split his sides.

" 'You're crazy, Nicholson,' he told me, 'this man is flesh and blood—and he's come back for blood. He came here to blackmail me. That don't worry me, not a bit, however. I'm not the individual for him to blackmail. I'll settle his hash, in a jiffy. Miss Flagg, call up on the phone for Sharpe.' "

The doctor paused. "Well?" said Kern at length.

"Well," went on Nicholson, "that's all —all that I know. I asked D. J. about him later, but D. J. said he'd scared him off—he had threatened to set Sharpe onto him—and Earle had never come back . . . this all happened a few months ago. And to-day D. J. is dead."

"I drew his will, and his niece in Denver is executor. I'd better write to her."

Kern wrote to her at once. Meantime something else happened. Under the statute of his state no will can be proven before the lapse of ten days after the testator's death. On the 11th day at 9 o'clock A. M. Sharpe filed a will for probate. It was not Kern's will. It was a later will.

But he didn't prove it, and for sufficient reason. For within the ten days that elapsed after the testator's death, Minette Martini Dalrymple, D. J.'s widow, had filed a caveat against the probate of any will, and the issuance of any letters. This relieved the surrogate of jurisdiction, and threw the whole matter into the orphans' court.

Kern took a look at the will that Sharpe had filed for probate. The more he read, the more his wonder grew. From the beginning it was like his will, word for word—save in one instance. So far as disposition went, it was the same. It gave $20,000 to the widow, and gave the residue to the niece, Ethel Ames, of Denver, Colorado. There the resemblance stopped. In the will that Kern had drawn, he had devoted one whole clause to the statement of D. J.'s reasons for cutting off Minette.

Sharpe had such a clause in this last will—this will was but some three months old—but his clause otherwise was wholly different. It read about like this:—

Fourth.—I make the foregoing provision for Minette, my reputed wife, for the reason that I have recently discovered that in fact she is not legally my wife—and that her former husband, Herndon Earle, whom I supposed was dead, is living—hence she cannot be my lawful

wife; hence I am under no obligation to provide for her in my will.

Kern made a copy of that clause and went back to his office. He studied the situation for many moments.

Then he got up upon his hind legs and howled. "The confounded idiot," he yelled—he was alone, "the confounded idiot—why didn't he leave my will alone? He can't prove this thing—not in a thousand years. . . ."

There was a tap upon his door—Dr. Nicholson came in.

"Do you know about this will?" asked Kern. Nicholson did—he had just heard of it. Kern showed him the clause. The doctor shook his head.

"In my will," said Kern, "I gave sound reasons for cutting off this woman—my will could be sustained. But this thing—it's just like Sharpe."

"It wasn't Sharpe," said the physician, "it must have been D. J. He orders—everybody else obeys."

Kern thought a moment. "No," he said at length, "it was Sharpe—the old man was afraid of my ability—afraid for the soundness of the will I drew him. He relied on Sharpe. Sharpe has done this thing—the blundering ass."

"Sharpe," said Nicholson, "is not a blundering ass."

"He's worse," said Kern, "and this will can never stand—because he's based it upon an insane delusion."

"Not an insane delusion," said the doctor, "I can bring the whole Society for Psychical Research to prove—."

"To prove what?" returned Kern, "to prove that Herndon Earle came back in the flesh?"

"No—in the spirit."

Kern spread his hands. "If he came back in the spirit, then D. J.'s reason is based upon false premises—if it was a spirit that he saw, then Minette's former husband isn't living—don't you see? And if he isn't living, then D. J. is in Dutch. He's cut off his loving wife for a bad reason—for a reason false in fact—a reason not susceptible of support by fact. I gave a sane reason—Sharpe gives an insane reason. I gave a reason susceptible of absolute support by absolute facts. Sharpe gives a reason that has no foundation. I don't care what you call it. You don't have to call it insane delusion. Look here, Doc, you're a bit of a lawyer. Look over these cases, and you'll see what I'm driving at—you'll see I'm right—."

Kern—while preparing D. J.'s former will—had made up a brief. He used it later in the orphan's court. These are the cases that it cited—to be brief:

Slaughter v. Heath, 27 L.R.A.(N.S.) 1 (and note), 127 Ga. 747, 57 S. E. 69; Potter v. Jones, 20 Or. 239, 25 Pac. 769, 12 L.R.A. 161; Re Lapham, 19 Misc. 71, 44 N. Y. Supp. 90; American Seamen's Friend Soc. v. Hopper, 33 N. Y. 619; Re Jenkins, 39 Misc. 618, 80 N. Y. Supp. 664; Re Keeler, 12 N. Y. S. R. 148.

The doctor read the brief. Kern was right, the doctor was a bit of a lawyer—in fact—a bit of everything.

"I get the gist of it," he conceded, "you're right, and Sharpe is wrong—he is a dunder-headed idiot."

"I wonder," said Kern slowly, "if in this case he isn't something else—I wonder—."

He went over with the doctor to Sharpe's office and saw Sharpe.

"Mr. Sharpe," he said, "I once drew a will for Mr. Dalrymple."

"I know you did," said Sharpe, genially, "and a well-drawn will it was. I followed it in the later will, except in one particular."

"What," asked Kern, "became of the will I drew?"

"D. J.," he answered, "tore it up, burnt it up—destroyed it with his own hands in the presence of witnesses—beside that he revoked it in his later will."

"Do you represent Miss Ames of Denver?" queried Kern.

"Don't know whether I do or not," said Sharpe, "thought it my duty to place this will on file. I expect to, though, of course. I have been D. J.'s lawyer for many years."

So far he had been unusually frank. Kern was unusually persistent. "Do you think," queried Kern, "that you can find this Herndon Earle?"

Sharpe arose. "Mr. Kern," he said frigidly, "glad to be of any service to you professionally. No trouble to show goods and all that. But as to the conduct of this probate—that is my affair. If

you have standing here, show me. Otherwise my lips are sealed."

Unexpectedly Kern found that he did have standing. Miss Ames, of Denver, called on him. "I got three letters," she told him, "one from you—one from Doctor Nicholson recommending you—."

"Sorry for that," said Kern, "I didn't know he wrote."

"The third," went on Miss Ethel Ames, "was from Mr. Sharpe. I didn't like his letter—I thought I'd see you first."

"You better see Sharpe," said Kern, "he was your uncle's lawyer—he drew this will—go and see him first."

She saw Sharpe and came back to Kern. "I don't like Mr. Sharpe," she said, "I think I'll stick to you."

"If you stick to me," said Kern with a smile, "some of D. J.'s money is liable to stick to me, too."

"I'm willing," said Miss Ethel Ames, "only don't make it as much as Mr. Sharpe would, please."

"Why is it," said Kern, "that I do all the work in this town and Sharpe gets all the fees. I must look cheap."

He called up Sharpe and advised him of Miss Ames' retainer. Sharpe only chuckled. "I'm satisfied," he said, "I've got other fish to fry."

He had as will appear. The widow's lawyer had been young Greenhalge—a *protégé* of Sharpe's. Kern had opened his eyes wide when he had seen Greenhalge's name upon the caveat. And soon he understood.

The hearing on the caveat came on. Greenhalge was not there. Minette Martini Dalrymple was, however, in deep mourning. Sharpe was there, as counsel for the widow. So was Kern. So was Ethel Ames. Dr. Nicholson was there. So were many others.

Kern rose. He fumed as he did so. He was attempting to support a will in which he had no faith—one that he did not draw himself—one drawn by Sharpe —one that could not stand—.

"I'll offer formal proof," he said. He did so. He made a prima facie case. He sat down.

Then Sharpe got up. "My position, please the court," said Sharpe, "is somewhat strange. I drew this will—I was justified in doing so. I drew it under the positive directions of the testator. Yet truth and right and justice have forced me to attack my own will. Your Honor will perceive that this meager allowance —hardly a pittance—is made to this widow out of this princely estate, for a reason, clearly stated and well defined in the will. Mr. Dalrymple at the time of its execution believed that he had talked to Mr. Herndon Earle, not twenty-four hours before he made his will. He sent for me at once. I drew this will. But, sir, the testator was mistaken—he may have been sane—still he was mistaken. No other reason does he give—save this one—Herndon Earle is still alive—hence my wife is not my wife. Let us test the soundness of this reason—for he gives no other—I'll call Dr. Nicholson."

The doctor took the stand, and testified that he had known Herndon Earle, that he had attended him for gunshot wounds years before, that he died of his wounds, that the witness had seen him die, had seen him dead, and had attended his funeral.

"That's all," said Sharpe.

"May I make a statement?" queried Nicholson. The court nodded. "Herndon Earle did come back," said the doctor, "and I saw him. But he came back in the spirit."

There was a titter that made the doctor glare. Even the court smiled. Sharpe guffawed. Kern only, listened with respect. Sharpe waved the doctor off abruptly. "I'll offer the certificate of death of Herndon Earle," he said. It was admitted. He rested. He smiled at Kern.

Kern rose. "I'd like an adjournment of four weeks, if your Honor please," he said.

"What for?" queried the court.

"I want four weeks to find Mr. Herndon Earle," he said, "the matter is important. No one can be prejudiced by the delay. I will consent to Mrs. Earle's appointment as temporary administrator —under bonds, of course."

"Mrs. Earle—you mean Mrs. Dalrymple, I assume."

"Yes," said Kern, absentmindedly, "so I did."

Back in his office Kern closeted him-

self with Doctor Nicholson and Miss Ethel Ames, his client.

"You are right," blurted out Nicholson, "Sharpe is a blundering ass—so is the court—so is everybody, but you Kern, and you, Miss Ames. I tell you that I know."

"In your own way you know," said Kern, "but I want to know in mine. Let me see that photograph."

It was a photograph of Herndon Earle that the doctor had produced in court. Kern studied it.

"Doctor," he said at length, "I recall seeing this man on the stage. I recall him well—his strut—his general appearance—his nasal twang—his sneer. He made a great villain—a wonderful villain. Tell me again—you say when you saw him a few months ago in front of D. J.'s—that he looked older—years older—than when he died?"

Kern put on his hat. "Go home, you two," he said, "I'm going to New York."

"What for?" asked Nicholson.

"To find Herndon Earle."

"How?"

"I don't know," said Kern, "but there's something about Earle that I remember—I'm going to see a manager about it. Couple that clue with the demeanor of my friends Sharpe and Minette Martini—and there may be something in it. It may lead to something—who knows—who knows."

Three weeks later he sent for the doctor and for Ethel Ames. "Doctor," he exclaimed, "did you ever see Earle play in Goble's drama of 'The Corleone'?"

"No," said Nicholson, "I did not. What has that got to do with it?"

"A good deal," said Kern, "I'll tell you what I've done. I went over to New York, and unearthed the whole history of Mr. Earle. I didn't have to go far back. I saw a manager or two—pulled a wire or two—spent a good deal of Miss Ethel Ames' money—in advance—and now I'm here."

"What else did you find?" asked Nicholson.

"Doctor," said Kern, solemnly, "I found Herndon Earle."

"In the flesh?"

Kern held up his hand. "You wait and see," he said.

They waited—for a week. Within a week the second hearing on the will came on before the orphans' court. The judge nodded to Kern.

"Proceed, counsel," he exclaimed.

"I'll call Mr. Guy Lispenard," he said. As he said it, the face of Minette Martini became as white as death. The face of Sharpe was immovable—his eyelids even did not flicker.

A door opened. A man entered—a man under the escort of three private detectives. When he entered, others in the court changed countenance. One was the butler of D. J. Another was Miss Flagg, D. J.'s trained nurse. Their faces were remarkable to see.

"Take the stand, Lispenard," exclaimed Kern.

For the first time Dr. Nicholson looked up. He started to his feet.

"My Lord," he cried, "that's Earle."

"That's Lispenard," said Kern. The man was sworn.

"You are an actor," queried Kern.

"I am."

"Ever know Herndon Earle?"

"I knew him well."

"Ever play with him?"

"Always—in double parts."

"Name some of them."

"The Corsican Brothers—chiefly the 'Corleone'—we swept the country for years with the 'Corleone.'"

"How did you first meet him?"

"He advertised—he put his photograph in the paper—he wanted a man who looked like that. He tried a dozen men. Finally he found me."

"Who were the characters in the 'Corleone'?"

"Two brothers—same old thing—they looked alike."

"Who played them?"

"Earle and myself."

"Did this require any preparation on your part?"

"Yes, I had to copy all his mannerisms. But I liked to. I liked Earle—I made myself another Earle, that's all. Then he got down and out—I left him."

"Did you know his wife?"

"Very well—I know her now."

"Did you know D. J. Dalrymple?"

"I met him once—about—well a few months ago."

"Where?"

The witness squirmed. "Look here," he said, "I want protection here. I didn't know what I was getting into. If I'm going to tell it all, I want protection. I didn't understand what it was all about till Mr. Kern here, told me—."

"Go ahead," said Kern, "I won't prosecute you."

Sharpe laughed. "You may be sure, sir, that I won't prosecute you. Your testimony is just what I want."

Kern waved his hand. "Lispenard," he said, "I'll keep faith with you. Can you fix about the date when you called on D. J. Dalrymple at his house in town?"

Lispenard fixed it. It was twenty-four hours before the will was signed.

"Dressed as you are?"

Lispenard nodded. "Through the West," he said, "they call me Herndon Earle—not that I mean any harm by it—it's only a bit of play-acting on my part, I liked Earle and . . . ."

"That's all, Mr. Lispenard," said Kern.

"No questions," roared Sharpe.

He rose. "Do you rest, Kern?" he asked.

"I surely do," said Kern.

"Now, your Honor," went on Sharpe blatantly, "you see how my good friend Kern has played right into my hands. My contention before was that this will had been executed while testator was acting under an insane delusion—a delusion which directly affected and controlled the provision for the wife. Now, however, you perceive that the testator was induced to cut off his wife by fraud. Somebody—no one knows who as yet—" Sharpe looked at the ceiling as he said this—but not at the court—"someone got this poor miserable broken down actor to call on D. J. Dalrymple and represent himself to be the living husband of Minette Martini,—the living Earle. I do not know who did this," said Sharpe—"of course," this very magnanimously, "I exempt my friend Kern from any such nefarious arrangement. Whether his client Miss Ames, unknown to him, had any hand in the matter I am not prepared to say. Only it is strange that Mr. Kern comes here into court in support of this will obtained by fraud, while I appear against it."

"I don't support this will," said Kern, "I oppose it. The will is no good. It must be rejected. I agree with Mr. Sharpe upon that point. But before I do that, let me call Miss Flagg."

"No, no, no, no," cried out Miss Flagg, "I didn't understand it either. I only did what Mr. ——, what Mrs. ——," she looked helplessly at Sharpe and Minette Martini,—"what I was told to do."

"Then," said Kern, "I'll call the butler."

The butler blanched. "I am willing to tell the court all about it," he said, "but not here—in the private room."

"Jenkins," screamed Minette Martini, "you shut up."

"That's all," said Kern.

The court leaned over toward Sharpe. "The court understands the situation," said the judge, "there is such a thing as setting up a domino just to knock it down again. This court," he went on, "under our statutes, sits not only as an orphans' court, but also as a court of sessions. If this matter be presented to the grand jury, this court will be pleased to preside over the ensuing trial."

There wasn't any ensuing indictment and there wasn't any ensuing trial. Kern knew there wouldn't be—but he knew something else. Sharpe's back was broken so far as court work was concerned. The courts had suspected him for years. Now, here was a judge who knew.

On their way out of court that day, however, Sharpe sidled up to Kern.

"Well, be that as it may," he said to Kern, with a grin, "the will's knocked out, and my woman will get half of the estate." He lowered his left eyelid. "And between you and me, Kern," he added in a whisper, "I get half of that."

Kern gazed upon him in sheer admiration. "I always thougght you were a blundering ass," he said, "I've been telling everybody so for years. But now I know you are. Don't you know what's happened? Your will is knocked out, but my will stands. Your woman gets $20,000; but we'll never let her have it, unless she wants this whole thing aired. And my client Ethel Ames—she gets the rest—under my will—under the will I drew."

"Your will," sneered Sharpe, "why your will's destroyed, torn up, burnt, revoked."

"Revoked and destroyed," said Kern, "by virtue of a device—a conspiracy—you blundering ass."

"Show me," said Sharpe.

"Come over to my office," returned Kern. Once there he took down a state report. "Look at Boylan v. Meeker, 28 N. J. L. 274, there's Schouler—look at him—there's the section—385—look at a million cases if you want to, I can show 'em to you. But one's enough for you. Physically, you blundering ass, my will was destroyed—legally, it still exists."

Kern opened his safe. He drew out a paper. He exhibited it to Sharpe. "Why, Sharpe," he went on, "it's not destroyed after all—look at it, if you will."

Sharpe looked at it and rubbed his eyes. "Why—why—" he stammered, "that's the will that D. J. tore up and burned—how did you do that trick?"

"Easily," said Kern, "it's my habit to have all wills executed in duplicate—two originals. I did it in this case. D. J. kept his—I kept mine. It serves to aid me now in proving the contents of the will that was destroyed."

As Sharpe left, Miss Ethel Ames came in, so did the doctor.

"Sorry," said Kern, "that truth and justice compelled me to knock out that will."

"What becomes of me?" queried Ethel Ames.

Kern bowed. "Much," said Kern, "you are the sole beneficiary of an estate of something like ten million."

He turned to Nicholson. "Doctor," he queried, with a smile, "are you sure that anybody knows?"

Wm Hamilton Osborne

A New Theory of Ghosts

There is a new theory to account for ghosts. They are "ætheric memories." They are past impressions reasserting themselves. On Christmas Day the discoverer of this theory dined with his vicar and was told about the vicarage ghost. It is the sound of footsteps along the passages and in the bedroom formerly used by the old vicar. These sounds are only heard when the house is very still, generally late at night. Then thus the theorist:

It has occurred to me that there may be a perfectly "natural" explanation of this phenomenon and of the innumerable recorded cases of things heard and seen of a similar character. They have nothing to do with "spirits" or anything living at all, but are, I suggest, merely past impressions left on matter and making themselves perceptible to our senses under favorable conditions, very much as impressions left on the memory present themselves to our consciousness in an apparently capricious manner.

This does not satisfy the inhabitant of a haunted house who is regularly at the end of each month strangled for a brief period by the ghost of a choleric old colonel who terminated his marital difficulties in that fashion. Mr. O'Connor postulates the existence of something more substantial than a "past impression on matter." There is still another explanation. In a seamen's mission not a hundred miles from Boston harbor, a ghost used to promenade the corridors and tramp heavily up and down stairs regularly after the house was quiet at midnight. The ghost was jocularly accepted as a housemate by the residents, though they were, to tell the truth, a bit mystified. Finally, hearing him performing one day in mid-forenoon, it flashed into their heads that the stairs and floors, sagged by the tramping of many feet during the day, were warping back into normal. Hence these ghostly footsteps. Hence, also, perhaps, the vicar's ghost.—Boston Transcript.

Editorial Comment

No fairy takes, nor witch hath power to charm—Shakespeare.

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Prosecutions for Witchcraft

THE prosecutions for witchcraft are among the most deplorable episodes in the annals of history. They resulted from cruel and absurd laws barbarously enforced by men under the influence of a fanatical delusion. They were supported by amazing testimony unworthy of the slightest credence. They afford a conspicuous instance of the proneness of witnesses to support a popular belief with alleged facts which have no better foundation than their own heated imaginations. They cast a crimson stain on the ermine and statute books of an earlier and less enlightened age.

More than two thousand years ago the lawgivers of Rome included in the Twelve Tables penal enactments against him who should bewitch the fruits of the earth or conjure away his neighbor's corn into his own field. Three centuries before the Christian era many Roman women were convicted of poisoning under the pretense of charms and incantations, which led to stringent laws against such practices. But in these cases the penalties were directed against those who were believed to have inflicted positive injury upon others, and this is said to have been the intent of the Mosaic law against witchcraft.

In the heathen world possession of supposed supernatural powers was not regarded as a crime in itself. The distinction between black or malevolent and white or beneficent magic was long kept up, the former only being forbidden. The Emperor Constantine, while decreeing capital punishment for those who practised noxious charms against the life or health of others, was careful to protect from prosecution all magical means used for good,—such as warding off hailstorms, excessive rains, etc.

When the Church grew powerful and heresy became a crime, it was customary, along with errors of doctrine, to accuse the heretics of magical practices, Devil worship, and all kinds of abominations. Pious horror at alleged diabolical arts gave rise to the popular dread of witchcraft, which at times convulsed whole provinces and lighted through Europe those baleful fires in which it has been estimated nine million accused persons perished.

Sporadic outbursts of popular frenzy gave rise to reigns of terror. Suspicion was rife. No one was safe, and to be accused was to be doomed. If illness or misfortune visited a man, if his cattle died or his crops failed, the cause was witchcraft. The poor creatures who often fell victims have been thus described: "An old woman with a wrinkled face, a furrowed brow, a hairy lip, a gob-

ber tooth, a squint eye, a squeaking voice, or a scolding tongue, having a ragged coat on her back, a spindle in her hand, a dog by her side—a wretched, infirm, and impotent creature, pelted or persecuted by all the neighborhood—such were the poor unfortunates selected to undergo the last tests and tortures sanctioned by the law, and which were of a nature no one would have inflicted on the vilest of murderers." Pins were thrust into their bodies to find the witch's mark which was thought to be insensible to pain; they were cast bound into ponds and rivers, where, if they floated, as they would generally do for a time, they were declared guilty. They were kept fasting and awake, and sometimes incessantly walking for twenty-four or forty-eight hours to induce confession, or were crushed beneath heavy weights until, in an agony of torture, they admitted their guilt.

From numerous recorded cases we may mention that of Margaret Barclay, of Irvine, Scotland, who was accused of participating in stirring up a tempest whereby a certain ship and part of its crew were lost. She was tortured by placing her bare legs in a pair of stocks and laying iron bars on them. Thus barbarously treated, she confessed and implicated Isabel Crawford. Her husband appeared at the trial with a lawyer. "All I have confessed was in an agony of torture, and all I have spoken is false and untrue." To which she pathetically added, "Ye have been too long in coming."

After conviction she returned to her confession, and died affirming it; but entreated the magistrates that no harm be done Isabel Crawford. She was strangled at the stake and her body burned to ashes.

Isabel Crawford was similarly tortured, and naturally confessed. After conviction she denied her confession, and, it is quaintly said, died absolutely refusing to pardon her executioner and without signs of penitence. Who can blame her?

Nor, perhaps, ought we to blame her persecutors unreservedly. Says Lecky: "The wisest men of Europe shared in the belief; the ablest defended it; the best were zealous foes of those who assailed it. For hundreds of years no man of any account rejected it. Lord Bacon could not devest himself of it. Shakespeare accepted it as did the most enlightened of his contemporaries. Sir Thomas Browne declared those who denied witchcraft to be infidels and atheists."

In England the statute of Elizabeth enacted in 1562 first made witchcraft in itself a crime of the first magnitude, whether directed to the injury of others or not. The act of James I. defined the crime still more minutely: "Anyone that shall use, practise, or exercise any invocation of any evil or wicked spirit, or consult or covenant with, entertain or employ, feed or reward, any evil or wicked spirit, to or for any purpose, or take up any dead man, etc., shall suffer death."

Probably the era of the Long Parliament witnessed the greatest number of executions for witchcraft. Three thousand persons are said to have perished during its sittings, by legal executions, independently of summary deaths at the hands of the mob.

"In 1664," we are told "Sir Matthew Hale tried and condemned two women, Amy Dunny and Rose Collender, at Bury St. Edmunds, for bewitching children. It is stated that the opinion of the learned Sir Thomas Browne, who was present, had great weight against the prisoners. Yet Hale was one of the best and wisest men of his time, and Browne had written an able work in exposition of popular fallacies. Chief Justices North and Holt were the first individuals occupying high places who had at once the good sense and the courage to set their faces against the continuance of this delusion, and to expose the general absurdity of such charges.

"At last the world began to awaken from the horrid nightmare: the feelings of the humane began to be shocked by the continued butchery, and the more intelligent to question, if not the existence of witchcraft, at least the evidence on which the accused were condemned. Advocates took courage to defend a reputed witch, and judges began to discourage the proceedings, and the frenzy gradually subsided."

The laws against witchcraft were formally repealed in England in 1736.

In New England the witchcraft mania raged with peculiar intensity. Under the leadership of the clergy the Puritans waged strenuous warfare with the powers of darkness. Their misguided zeal led to many executions, torturings, and imprisonments,—each a stigma showirg all the darker against the fair background of Puritan excellence.

At times court proceedings disclose the fact that a belief in witchcraft is still held by a few visionaries or by members of the most ignorant stratum of society. But its power to goad whole communities into frenzy, and to make Kingdoms lurid with witch-consuming fires or ghastly with the gibbet, has fortunately passed forever.

Professional Ethics

Questions submitted to the Committee on Professional Ethics of the New York County Lawyers' Association were answered as follows:

Question. An individual engaged in the printing business, and making a specialty of case and brief printing, presents the following question:

"In the opinion of the committee of professional ethics is there impropriety in my advertising, in connection with my business, the following:

"First-Class Briefs Written for the Profession by Able Lawyers. Also Cases on Appeal Prepared,

and in my employing for my customers lawyers to write briefs and to prepare cases on appeal, making arrangements with them for their compensation by me out of the compensation received by me for the combined work of furnishing to my customers cases on appeal and briefs written by my said lawyers and printed for the use of my customers at my printing establishment?"

Answer. While this question appears to be propounded by one not a member of the profession, yet since it involves questions of "proper professional conduct," the committee expresses its opinion as follows:

The course of action suggested would, in our opinion, be improper for the following reasons:

1. A printer so advertising, even if he were not violating the letter of § 270 of the penal law, which makes it unlawful for a person who has not been duly admitted to the bar to practise law, would certainly be acting contrary to the spirit of that provision.

2. Section 280 of the penal law makes it unlawful for a corporation to furnish legal services or advice in this way. We think the principle which underlies this provision applies equally to an individual who is not a lawyer, and makes it equally improper for him to furnish legal services in this manner.

3. The relation between attorney and counsel is of a personal and fiduciary nature, and imposes obligations and responsibilities which cannot be fully realized unless the attorney and counsel deal with each other directly.

4. The relation of the writer of a brief to the court is one the dignity and responsibility of which are inconsistent with the scheme proposed.

5. The offer by a third party, not an attorney, to furnish or sell the legal services of members of the bar (in this case undisclosed), is derogatory to the dignity and self-respect of the profession, and would tend to lower the standards of professional character and conduct.

Question. Is it proper professional conduct for lawyers, members of a legislature which has passed a law instituting a State Commission authorized to approve and supervise the operations of a certain class of corporations, for the performance for the public of certain acts authorized by the law, to permit such a corporation to advertise for such business and solicit the patronage of the public by announcements stating that such lawyers, designating them by their official titles as members of the Legislature, are their counsel?

Answer. In the opinion of the Committee the conduct suggested is improper; the reference to the position of the counsel as members of the Legislature is too apt to create the impression that that fact gives their client an improper advantage.

All kinds of arguments and questions deep,
All replications prompt, and reason strong.
—Shakespeare.

Accord and satisfaction — acceptance of amount acknowledged to be due — payment. Cashing a check sent in payment of the portion of an account which is admitted to be due is held in Whittaker Chain Tread Co. v. Standard Auto Supply Co. 216 Mass. 204, 103 N. E. 695, 51 L.R.A. (N.S.) 315, not to prevent enforcement of the balance, although the tender is on condition that it shall be received in full payment.

Alteration of instruments — changing date of note. That crossing out the date of a note and writing another above it cannot be regarded as a mere memorandum of the time from which interest is to be figured, rather than an alteration of the instrument, is held in the Vermont case of Barton Sav. Bank & T. Co. v. Stephenson, 89 Atl. 639, which is accompanied in 51 L.R.A.(N.S.) 346, with supplementary annotation on the subject of alteration of the date of a note.

Animal — interference with dog fight — liability for injury. That one who voluntarily exposes himself to danger by attempting to separate two fighting dogs then engaged in a combat cannot recover damages from the owner of the dog by which he is bitten, because he has himself helped to create the condition and the danger, is held in the Nebraska case of Warwick v. Farley, 145 N. W. 1020, 51 L.R.A.(N.S.) 45.

Building contract — time clause — waiver. Where a contract requires a building to be erected by a specified time, the naked promise of the owner to waive the time clause, made without consideration, is held invalid in Jobst v. Hayden Bros. 84 Neb. 735, 121 N. W. 957, annotated in 50 L.R.A.(N.S.) 501, and such owner is not thereby estopped to claim damages for such delay, when it does not appear that the contractor acted upon such promise.

Carrier — rule prohibiting the turning of seats — ejection. The first case to consider the reasonableness of a rule prohibiting the turning of seats seems to be Chesapeake & O. R. Co. v. Spiller, 157 Ky. 222, 162 S. W. 815, 50 L.R.A.(N.S.) 394, which holds that a rule of a railroad company forbidding passengers to turn seats so as to ride backwards is reasonable, and that a passenger may be ejected for refusing to obey a rule forbidding the turning of seats so as to face the rear of the car.

Carrier — standing in car — negligence. That a passenger is not, in the absence of a warning not to do so, negligent *per se* in standing in a car as it moves out of

the station, although there may be an unoccupied seat in the car, so as to prevent his holding the carrier liable in case he is injured by a violent impact of the two sections of the train after it has broken in two, is held in Louisiana & N. W. R. Co. v. Willis, 108 Ark. 477, 158 S. W. 114, annotated in 50 L.R.A.(N.S.) 441.

It appeared in this case that the plaintiff was a traveling salesman forty-five years of age, and that he braced himself by leaning against the side of the car.

A passenger is not obliged to retain his seat during the entire journey; but he has no right unnecessarily to expose himself to danger. Whether he was guilty of negligence so as to preclude a recovery for injuries sustained when he was not occupying a seat is generally a question for the jury to determine from all the circumstances of the particular case, taking into consideration his age and physical condition, the speed of the train, the reason for leaving his seat, the purpose to be accomplished, and all other attendant facts and circumstances as disclosed by the evidence. In a few cases, however, it has been held that the passenger was negligent as a matter of law in leaving his seat under the circumstances disclosed by the evidence.

Carrier — street car passenger — standing in car — negligence. As a general rule a passenger who stands in a street car when it is in motion is not, as a matter of law, negligent so as to preclude recovery for injuries sustained on account of negligent operation of the car, but the question of negligence is ordinarily for the jury to decide under the circumstances of the particular case, taking into consideration his age and physical condition, the speed of the car, the reason for standing up in the car, and all the other attendant facts and circumstances as disclosed by the evidence.

It is held not negligence *per se* in Young v. Boston & N. Street R. Co. 213 Mass. 267, 100 N. E. 541, annotated in 50 L.R.A.(N.S.) 450, for a street car passenger to leave his seat as the car approaches his stop and stand at the door, with a firm hold thereon, awaiting the stop, although he knows that the car is moving at high speed with unusual swaying, and must pass over a switch before reaching the stopping place.

Case — forbidding patronage of restaurant — right of action. That the proprietor of a restaurant who is not a student in a college, and has no children as such students, has no right of action against the college for forbidding pupils to patronize his restaurant, is held in Gott v. Berea College, 156 Ky. 376, 161 S. W. 204, annotated in 51 L.R.A.(N.S.) 17.

Commerce — transportation of woman for immoral purposes — power of state. That a state cannot forbid the importation, or aiding in the transportation, of a woman into the state for immoral purposes, since Congress has undertaken to legislate upon that subject, is held in State v. Harper, 48 Mont. 456, 138 Pac. 495, 51 L.R.A.(N.S.) 157, which appears to be the only case directly passing upon the question whether a state statute enacted for the prevention of immorality is unconstitutional as an interference with interstate commerce.

Conspiracy — raising price — necessity. A combination of several persons and corporations, all independent dealers in milk and cream, to raise and increase the price thereof, is held a violation of the statute, in the Minnesota case of State v. Minneapolis Milk Co. 144 N. W. 417, annotated in 51 L.R.A.(N.S.) 244, though the increased price was necessary to afford them a profit.

Constitutional law — forbidding repair of buildings — taking of property. That there is no unconstitutional taking of property by forbidding the repair of frame buildings within the fire limits of a municipal corporation, so as to make and keep them habitable, is held in State v. Lawing, 164 N. C. 492, 80 S. E. 69, annotated in 51 L.R.A.(N.S.) 62.

Constitutional law — requiring destruction of weeds in highways. Requiring a landowner to cut, or pay for cutting, the noxious weeds in the abutting highway to the center thereof, is held in the Washington case of Northern P. R. Co. v. Adams County, 138 Pac. 307, not to de-

prive him of his property without due process of law.

A note on the right to impose on an abutting owner the duty or expense of removing weeds, snow, ice, etc., in the highway, accompanies the foregoing decision in 51 L.R.A.(N.S.) 274.

Contract — for permanent employment — public service corporation — public policy. A contract made by a railroad company to give an injured employee, in settlement of his claim, employment as long as he lives and proves a competent and worthy man, and if he is thrown out of employment to pay him his salary as long as he lives, unless he has been discharged for neglect of duty or dissipation, is held not against public policy in the Indiana case of Cox v. Baltimore & O. S. W. R. Co. 103 N. E. 337, as tending to impair the efficiency of a public service corporation by restricting its future management.

The recent cases concerning contracts for permanent employment accompany the foregoing decision in 50 L.R.A. (N.S.) 453, the earlier authorities having been presented in 35 L.R.A. 512.

Contract — parol sale of land — delivery of deed to stranger. The fact that, by direction of the purchaser, the deed was made to a stranger, is held in the Oregon case of Malzer v. Schisler, 136 Pac. 14, annotated in 51 L.R.A.(N.S.) 77, not to change the rule that a parol contract to purchase real estate may be enforced if the deed has been executed and delivered.

Contract — to reimburse petitioners for road improvement — public policy. An agreement by a highway contractor to pay those who petitioned for the improvement and undertook to pay 10 per cent of its cost, all that portion of said 10 per cent which exceeds a specified amount, in consideration of certain privileges with respect to the use of their land during performance of the work, is held void as against public policy in the Maryland case of Walsh v. Hibberd, 89 Atl. 396, annotated in 50 L.R.A. (N.S.) 396, where such agreement became necessary to enable the petitioners to secure the 10 per cent to make the improvement possible.

Corporation — insolvency — dissolution. Insolvency of a corporation and the appointment of a receiver to manage its business and wind up its affairs are held in Leonard v. Hartzler, 90 Kan. 386, 133 Pac. 570, annotated in 50 L.R.A.(N.S.) 383, not to work a dissolution of the corporation, nor will these things of themselves impair its capacity to sue or to enforce judgments previously obtained.

Corporation — stock — trust fund — issuance at discount — liability. That a subscriber to stock of a corporation whose contract provides that, upon payment of a portion of the par value of the stock, it shall be issued as fully paid and nonassessable, cannot, under the trust fund theory, be compelled to pay in for the benefit of creditors the difference between the contract price and the par value is held in Southworth v. Morgan, 205 N. Y. 293, 98 N. E. 490, which is accompanied in 51 L.R.A.(N.S.) 56, by the late cases on issuance of stock at discount as affecting a stockholder's liability for debts, the earlier decisions having been collected in 8 L.R.A.(N.S.) 263.

Corporation — suit by minority stockholders — demand on management. Demand on a corporation and its management to bring suit to recover corporation property which had been transferred to another corporation is held not necessary in the Arizona case of Fleming v. Warrior Copper Co. 136 Pac. 273, annotated in 51 L.R.A.(N.S.) 99, to sustain a suit by minority stockholders, where the managers, who had complete control of the affairs of the corporation, are shown to have been hostile to plaintiff, and to have acted upon a preconcerted plan to accomplish the result complained of.

Corporation — suit by stockholders — refusal of directors to proceed. Absence of response within the time specified by the directors of a corporation to a notification by stockholders that, if they do not institute a proceeding to recover stock alleged to have been fraudulently issued by the corporation, the stockholders will

do so, is held sufficient in Continental Securities Co. v. Belmont, 206 N. Y. 7, 99 N. E. 138, annotated in 51 L.R.A. (N.S.) 112, to justify the stockholders' suit, and it is not necessary to show notice to the body of stockholders collectively, and refusal by them to act.

Criminal law — new trial — perjury. In a criminal action, where it is shown on a motion for a new trial that false and perjured testimony which the defendant had no fair opportunity to rebut at the trial probably influenced the jury to find him guilty, it is held the duty of the court in State v. Mounkes, 91 Kan. 653, 138 Pac. 410, to set the conviction aside, and grant a new trial.

The decisions on perjury as a ground for a new trial accompany the foregoing case in 51 L.R.A.(N.S.) 286.

Damages — breach of contract to establish business — loss of profits — expenses. That loss of profits is not a proper element of damages for breach of contract to establish a business in a distant and sparsely settled country is held in the Washington case of Webster v. Beau, 137 Pac. 1013, annotated in 51 L.R.A. (N.S.) 81; but actual losses in the form of expenses incurred and time lost may be recovered for breach of a contract to form a partnership and establish a business in a distant and sparsely settled country.

Damages — mental suffering — physician's breach of contract. Mental suffering by a man because a physician whom he has employed to attend his sick wife delays upon the way, and thereby fails to minister to her suffering, is held not an element of damages to be recovered for breach of the contract in the Oregon case of Adams v. Brosius, 139 Pac. 729, annotated in 51 L.R.A.(N.S.) 36.

Divorce — vulgar and indecent conduct. Vulgar, indecent, and unnatural conduct on the part of a wife, and her solicitation of the husband to engage in such conduct with her, showing viciousness and degeneracy on her part, are held not sufficient grounds for divorce, in the West Virginia case of Huff v. Huff, 80 S. E. 846, annotated in 51 L.R.A.(N.S.) 282, nor do they justify the husband in breaking off cohabitation with her and treating her as having abandoned or deserted him.

Elections — death of successful candidate — right of rival. Where a candidate for election dies before election day, too late to have a candidate substituted as provided by statute, or to notify the voters of his death, so that a majority vote for him in ignorance of his death, it is held in the Iowa case of Patten v. Haselton, 146 N. W. 47, annotated in 51 L.R.A. (N.S.) 226, that the person receiving the next highest number of votes cannot be declared elected, but a vacancy will exist in the office, where the statute provides that the person having the greatest number of votes shall be declared elected.

Equity — prohibiting picketing — violation of injunction. That equity may prohibit the picketing of premises of an employer against whom a strike has been declared is held in the Michigan case of Re Langell, 144 N. W. 841, annotated in 50 L.R.A.(N.S.) 412, which further determines that one who goes to the premises of an employer against whom a strike has been declared, and in whose favor an injunction against picketing has been issued, for the purpose of doing picket duty, under the impression that the court had no jurisdiction to enjoin such act, is guilty of contempt.

The decisions are not harmonious upon the question as to the legality of picketing *per se*, and whether picketing as such should be enjoined irrespective of the question of actual violence or conduct attending the picketing calculated to intimidate. It may be said, however, that the majority of the cases recognize, or at least do not deny, that picketing may be lawful in some circumstances; in other words, hold or concede that picketing is not unlawful *per se*, and should not as such be enjoined; although there is discernible a growing tendency to accept the contrary view adopted in Re Langell, upon the ground that, as a practical matter, there can be no such thing as peaceable picketing, especially where there are a considerable number of picketers.

Estoppel — quitclaim — after-acquired title. That a quitclaim deed by a woman of land held by herself and her husband by entireties does not pass the property when the title vests in her by the death of her husband, is held in the Michigan case of Ernst v. Ernst, 144 N. W. 513, 51 L.R.A.(N.S.) 317.

Evidence — character — presumption. The offering by accused of evidence as to his good character for truth and veracity is held in the Tennessee case of Durham v. State, 163 S. W. 447, 51 L.R.A. (N.S.) 180, not to deprive him of the presumption that his character for peace and quietness is good.

This decision further holds that the presumption of the good character for peace and quietness of one accused of murder cannot be considered as evidence in his favor, in addition to the presumption of innocence, to raise a reasonable doubt of guilt in the minds of the jury.

Evidence — records of public insane asylum — privileges. The question whether the records of an insane hospital constitute privileged communications between physician and patient appears to be one upon which there is little authority.

The recent Michigan case of Massachusetts Mut. L. Ins. Co. v. Michigan Asylum, 144 N. W. 538, 51 L.R.A. (N.S.) 22, holds that the records of a public insane asylum containing information concerning the mental and physical condition of a patient, which has been obtained by physicians in their professional character for the purpose of determining the proper treatment, are privileged, and are not open to inspection as public records.

Extradition — situs of offense —nonsupport of wife. The first case to pass upon the right to extradite one who abandons his wife or family after leaving the state of their domicil, which is seeking his extradition, seems to be the Nevada case of Ex parte Kuhns, 137 Pac. 83, 50 L.R.A.(N.S.) 507, which holds that one not in arrears under his agreement to support his wife, from whom he has separated at the time he leaves the state, is not subject to extradition as a fugitive from justice for failure to support her, in case he subsequently becomes delinquent in his payments.

Highway — ice on sidewalk — liability of abutting property owner. A property owner who, for a period of two weeks, knowingly permits ice formed from water discharged by a leader from his building, to remain in ridges and lumps upon the adjoining sidewalk, is held liable in Striger v. Deickman, 158 Ky. 337, 164 S. W. 931, annotated in 51 L.R.A. (N.S.) 309, for injury to a pedestrian who falls in attempting to pass over it.

Highways — injury — liability of municipality. The city of New Orleans is held responsible in damages in the Louisiana case of Nessen v. New Orleans, 64 So. 286, 51 L.R.A.(N.S.) 324, for the death of a citizen who, at night, without notice or knowledge of the existence of the obstruction, ran against a wire rope placed in the street by direction of the municipal authorities, and was thereby mortally injured.

Indictment — sale of liquor — disjunctive — duplicity. Where an indictment follows the words of a statute, and charges one with illegally selling "spirituous or intoxicating" liquors, the use of the disjunctive "or" held in the Louisiana case of State v. George, 63 So. 866, annotated in 51 L.R.A.(N.S.) 133, not to make the indictment bad for duplicity, as the lawmaking power has the right to make the sale of "spirituous" and "intoxicating" drinks one crime, chargeable in one indictment.

Infant — time for rescinding contract for fraud. That an infant need not wait until arriving at majority before rescinding a purchase of personal property for fraud of the seller is held in the Michigan case of Stoll v. Hawks, 146 N. W. 229, annotated in 51 L.R.A.(N.S.) 28.

Injunction — to enjoin discharge of teacher. At the instance of resident taxpayers of a school district it is held in the Oklahoma case of Greer v. Austin, 136 Pac. 590, annotated in 51 L.R.A.

(N.S.) 336, that the powers of equity may not be invoked to enjoin the officials of the school district from discharging a teacher employed by contract to teach a school for a specified time.

Joint debtor — pollution of stream. When two or more persons, by their concurrent action, pollute a stream, to the injury of another through whose land the stream flows, they are held jointly and severally liable for the wrongdoing in McDaniel v. Cherryvale, 91 Kan. 40, 136 Pac. 899, 50 L.R.A.(N.S.) 388, and the injured party may, at his option, institute an action, and recover against one or all of those contributing to his injury.

License — plumbing — discrimination — member of firm. An ordinance requiring a journeyman plumber to secure a license to do business on his own account, while permitting firms or corporations to do business and employ helpers if only one member of the firm or one executive officer of the corporation secures a license, is held invalid for discrimination, in the Mississippi case of Vicksburg v. Mullane, 63 So. 412, annotated in 50 L.R.A.(N.S.) 421.

Malicious prosecution — liability for giving perjured testimony. That giving perjured testimony in a criminal case to aid in securing conviction of accused will not render one liable to respond in damages as for malicious prosecution is held in McClarty v. Bickel, 155 Ky. 254, 159 S. W. 783, 50 L.R.A.(N.S.) 392.

Master and servant — simple tool — effect of superintendent's direction to use. A master is held not entitled in the Tennessee case of Philip Carey Roofing & Mfg. Co. v. Black, 164 S. W. 1183, 51 L.R.A. (N.S.) 340, to avoid liability to an employee through a defect in a ladder, on the theory that it was a simple tool, if his superintendent, upon being notified of the defect, insisted that the ladder was safe, and required it to be used, and the injured employee was in fact ignorant of the defect, which was not readily discoverable.

Master and servant — simple tools — ladder. Spikes in the bottom of a ladder to prevent its slipping are held in the Tennessee case of Sivley v. Nixon Min. Drill Co. 164 S. W. 772, not to change its character as a simple tool, risk from defects in which is assumed by the employee.

Recent cases, together with reference to earlier ones, are appended to the foregoing decision in 51 L.R.A.(N.S.) 337.

Mechanics' lien — charity — permitting use of material. The failure of the trustees of a charitable institution to object to the use of material furnished at the order of other persons, in remodeling a building situated upon the property, is held in the Nebraska case of Horton v. Tabitha Home, 145 N. W. 1023, annotated in 51 L.R.A.(N.S.) 161, not to have the effect of creating a mechanics' lien thereon.

This decision finds no support in the few cases which discuss the question.

Monopoly — purchase from single dealer. An agreement of a retailer to buy a particular line of goods exclusively from a certain manufacturer thereof, for a limited period of time, and confined to a particular locality, in consideration of other covenants therein of mutual advantage to the parties, and when otherwise unobjectionable under the law, is held not invalid because in restraint of trade, in the Oklahoma case of J. W. Ripy & Son v. Art Wall Paper Mills, 136 Pac. 1080, 51 L.R.A.(N.S.) 33.

Mortgage — limitation of action — effect of provision accelerating time for payment of principal. A provision in a bond that if any instalment of interest shall remain unpaid for ninety days after demand, the principal shall at once become due and payable, is held in the Mississippi case of Central Trust Co. v. Meridian Light & R. Co. 63 So. 575, to have the effect to set the statute of limitations running against the right to enforce the security from the time when a demand for the payment of interest due was refused, notwithstanding no request has been made by the bondholders for the foreclosure of the deed of trust, which contains a provision that, should a default continue for three months, the trustee, upon being

requested to do so by a majority of the bondholders, shall proceed to sell.

The recent cases on the effect of an acceleration provision in a mortgage or note to start the statute of limitations running accompany the foregoing decision in 51 L.R.A.(N.S.) 151, the earlier authorities having been presented in 12 L.R.A.(N.S.) 1190, and 22 L.R.A. (N.S.) 110.

Municipal corporation — authority to prevent members of different races from living on same street. Charter and statutory authority to pass ordinances for the general welfare of the city, and such regulations for the better government of the town as the commissioners may deem necessary, is held in the North Carolina case of State v. Darnell, 81 S. E. 338, 51 L.R.A.(N.S.) 332, not to include power to forbid members of either the white or colored race to live in any block where a majority of the residents are of the other race.

Municipal corporation — obstruction of sidewalk — health measure — liability. Neither the city nor the officers of its board of health are liable for damages sustained by reason of acts committed in the exercise of police power for the benefit of the public health and safety; but if, in the exercise of such powers, such officers place a rope barrier across a public walk or street, which becomes and remains in a defective and dangerous condition, and the city either has actual notice of the defect, or it has existed for such a length of time as that notice will be presumed, it is held in the Nebraska case of Sheets v. McCook, 145 N. W. 252, 51 L.R.A.(N.S.) 321, that the city may, if the facts in the case warrant, be held liable for its negligence in leaving the walk in an unsafe and dangerous condition.

Officers — impeachment — conduct during previous term. Where the state Constitution, by providing that the penalty in impeachment proceedings shall not extend beyond the removal from office and disqualification from holding office for the term for which the officer impeached was elected or appointed, evinces a policy to make each term independent of the other, and to disassociate the conduct under one term from the qualification or right to fill another term, it is held in the Alabama case of State ex rel. Brickell v. Hasty, 63 So. 559, annotated in 50 L.R.A.(N.S.) 553, that charges against an officer, based on his conduct during his previous term of office, will be struck from the information.

But the acts of an officer during a previous term, though not grounds for impeachment, may be considered in so far as they are connected with or bear upon his general course of conduct during his present term, for the limited purpose of inquiring into his motive and intent as to the acts and omissions charged to him during his second term.

Parties — corporation — suit by stockholder. That the corporation is a necessary party to a suit by a stockholder to hold directors liable for refusal to enforce contracts in its favor and to protect its property is held in Kelly v. Thomas, 234 Pa. 419, 83 Atl. 307, annotated in 51 L.R.A.(N.S.) 122.

School — right of children in institution. Children of nonresident parents who are committed to a charitable institution within the limits of a school district, which has undertaken to furnish them with support and education, are held not entitled in the Michigan case of Lake Farm v. District Board, 46 N. W. 115, to the benefits of a statute providing that all persons of certain age, residents of any school district, shall have equal right to attend any school therein. The decision was in part based upon the fact that the institution to which these boys were committed did not pay any school tax in the district.

The case is accompanied in 51 L.R.A. (N.S.) 234, by a note on what constitutes residence entitling a child to the privilege of public schools, which supplements notes on the same subject in 26 L.R.A. 581, and 36 L.R.A.(N.S.) 341.

School — transportation of pupils at public expense. The requirement of uniformity in the public school system contained in a constitutional provision making it the duty of the legislature to en-

courage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement, by establishing a uniform system of free public schools, and requiring that public schools shall be maintained in each school district in the county for at least four months during each scholastic year, is held not violated in the Mississippi case of Bufkin v. Mitchell, 63 So. 458, 50 L.R.A.(N.S.) 428, by a statute which provides for the transportation at public expense of pupils living 2 miles from a consolidated school, and for the raising of funds to maintain such schools for at least seven months in each scholastic year.

The constitutionality of statutes providing for the transportation of pupils to and from school, wholly or partly at public expense, seems very rarely to have been questioned; and in upholding the validity of such a statute, the foregoing decision is in accord with the only other like case which has been found,—that of School Dist. v. Atzenweiler, 67 Kan. 609, 73 Pac. 927.

Tax — common property — method of assessment. Where taxes become a lien on the property assessed, to be collected by sale of so much of the land as is necessary to discharge the tax and charges, it is held in Curtiss v. Sheffield, 213 Mass. 239, 100 N. E. 365, annotated in 50 L.R.A.(N.S.) 402, that taxes against land held in common cannot be assessed upon the undivided interests of the tenants.

Witness — evidence against decedent's estate — establishing testamentary incapacity. A wife who, in the absence of a will, will inherit all her husband's property, is held incompetent in the Mississippi case of Whitehead v. Kirk, 61 So. 737, annotated in 51 L.R.A.(N.S.) 187, to testify as to his testamentary incapacity, under a statute providing that one cannot testify to establish against the estate of a deceased person a claim which originated during his lifetime.

Recent English and Canadian Decisions

[Note.—The more important of these decisions will be reported, with full annotations, in British Ruling Cases.]

Charities — charitable trust — gift for benefit of employees of certain company — validity. A gift in trust to pay the income therefrom to the directors of a commercial manufacturing company "for the purposes of contribution to the holiday expenses of the workpeople employed in the spinning department of the said company, in such manner as a majority of the directors shall in their absolute discretion think fit," the directors being also given power to "divide the same equally or unequally between such workpeople, or some of them only, as they shall in their absolute discretion think fit,"—was held in Re Drummond [1914] 2 Ch. 90, not to be a valid charitable trust, and therefore to be void as infringing the rule against perpetuities; the decision being put on the grounds that the beneficiaries, though persons of small incomes, could not judicially be considered as poor people, and that the trust was not for general public purposes, but for a body of private individuals.

Contracts—restraint of trade—illegality. A manufacturer of salt entered into a contract by which it agreed to sell to a company, which was a combination of salt manufacturers, a quantity of salt the delivery of which was to be spread over four years, and (with certain specified exceptions) not to make any other salt for sale, or to lease or sell any of its land during the contract for salt making or boring for brine for salt making. The seller was to have the option of buying back a certain number of tons of salt in each year at the purchaser's selling price, and was to be appointed a distributor on the same terms as the purchaser's other distributors. The manufacturer, having sold salt in violation of this agreement, was sued for breach of contract. It was held by the House of Lords, in North Western Salt Co. v. Electrolytic

Alkali Co. [1914] A. C. 461, that a court of justice was not at liberty to infer, from the terms of the contract in controversy, that it was directed to establishing either a pernicious monopoly or a state of things injurious to the public; and that the question of illegality not having been raised by the pleadings, the court of appeal had erred in taking into consideration the distributor's agreement and an agreement between the plaintiffs and other salt manufacturers. The Lord Chancellor, after remarking that unquestionably the combination was one the purpose of which was to regulate the supply and keep up prices, said: "But an ill-regulated supply and unremunerative prices may, in point of fact, be disadvantageous to the public. Such a state of things may, if it is not controlled, drive manufacturers out of business, or lower wages, and so cause unemployment and labor disturbance. It must always be a question of circumstances whether a combination of manufacturers in a particular trade is an evil from a public point of view. The same thing is true of a supposed monopoly." With reference to the question of reasonableness of contracts in restraint of trade, he said that the question is not one of evidence, though evidence may be given as to the character of the business and the circumstances, but that the question of the reasonableness of what appears on the face of the document is one of law for the court; that when the controversy is as to the validity of an agreement, such as an agreement for service, by which someone who has little opportunity of choice has precluded himself from earning his living by the exercise of his calling after the period of service is over, the law looks jealously at the bargain, but that when the question is one of the validity of a commercial agreement for regulating their trade relations entered into between two firms or companies, the law adopts a somewhat different attitude,—it still looks carefully to the interest of the public, but it regards the parties as the best judges of what is reasonable as between themselves.

Contracts — option for purchase — waiver. An option to purchase given by a lease is not waived or abandoned by the lessee's acceptance during the term of a new lease to begin on the expiration of the preceding lease. Mathewson v. Burns, 50 Can. S. C. 115.

Eminent domain — compensation — adaptability of property for purpose as element of value. The value to be paid for upon the expropriation of property is the value to the owner as it existed at the date of the taking, not the value to the taker. The value to the owner consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that fails to be determined. Where, therefore, the element of value over and above the value of the ground for agricultural purposes consists in adaptability for a certain undertaking, the value is not a proportional part of the assumed value of the whole undertaking, but is merely the price, enhanced above the bare value of the ground, which possible intended undertakers would give. That price must be tested by the imaginary market which would have ruled had the land been exposed for sale before any undertakers had secured the powers, or acquired the other subjects, which made the undertaking as a whole a realized possibility.

The foregoing principles are stated in the opinion of the Privy Council in Cedar Rapids Mfg. & Power Co. v. Lacoste [1914] A. C. 569.

War — prize — condemnation — rights of neutral mortgagees. One of the first decisions by the English prize court holds that the rights of neutral mortgagees of an enemy vessel cannot prevail against capture, the court saying that authority to this effect may be found both in English and American cases. It was contended that, on the analogy of protection of neutral goods in enemy vessels which is afforded by the Declaration of Paris, neutral encumbrances on an enemy ship should be protected; but the court said that the principles of capture are different in the two cases, and that it would make maritime capture a hazardous proceeding if the captors had to take account of such claims upon the captured property, and would open the way to evasion of the belligerent rights. The Marie Glaeser, 13 Law Times 468, 49 L. J. Notes of Cases, 545.

Glen. I can call spirits from the vastly deep.
Hot. Why, so can I, or so can any man;
But will they come when you do call for them?
—Shakespeare.

Hanged by a Ghost. An old volume of the Quarterly Review mentions a crime discovered in a most extraordinary way in Australia in the year 1830, of which a public record is preserved, and which figures with full details in the journals of that period. The confidential steward of a wealthy settler near Sydney stated that his master had suddenly been called to England on important business, and that during his absence the whole of his immense property would be in his exclusive care. Some weeks after an acquaintance of the absentee settler, riding through his grounds, was astonished to perceive him sitting upon a stile. He strode forward to speak, when the figure turned from him with a look of intense sorrow, and walked to the edge of a pond, where it mysteriously disappeared. On the morrow he brought a number of men to the water to drag it, and the body of the man supposed to be on his way to England was brought up. The steward was arrested, brought to trial, and, frightened at the story of his master's ghost, confessed the crime, stating that he did the murder at the very stile on which his master's ghost had appeared. He was duly executed.

Ejectment of Ghosts. "The Northern people," writes Sir Walter Scott in his Demonology and Witchcraft, "also acknowledged a kind of ghosts who, when they had obtained possession of a building, or the right of haunting it, did not defend themselves against mortals on the knightly principle of duel, like Assueit, nor were amenable to the prayers of the priest or the spells of the sorcerer, but became tractable when properly convened in a legal process. The Eyrbiggia Saga acquaints us that the mansion of a respectable landholder in Iceland was, soon after the settlement of that island, exposed to a persecution of this kind. The molestation was produced by the concurrence of certain mystical and spectral phenomena, calculated to introduce such persecution. About the commencement of winter, with the slight exchange of darkness and twilight which constitutes night and day in these latitudes, a contagious disease arose in a family of consequence and in the neighborhood, which, sweeping off several members of the family at different times, seemed to threaten them all with death. But the death of these persons was attended with the singular consequence that their specters were seen to wander in the neighborhood of the mansion house, terrifying, and even assaulting, those of the living family who ventured abroad. As the number of the dead members of the devoted household seemed to increase in proportion to that of the survivors, the ghosts took it upon them to enter the house, and produce their aerial forms and wasted physiognomy, even in the stove where the fire was maintained for the general use of the inhabitants, and which, in an Iceland winter, is the only comfortable place of assembling the family. But the remaining inhabitants of the place, terrified by the intrusion of these specters, chose

rather to withdraw to the other extremity of the house and abandon their warm seats, than to endure the neighborhood of the phantoms. Complaints were at length made to a pontiff of the god Thor, named Snorro, who exercised considerable influence in the island. By his counsel, the young proprietor of the haunted mansion assembled a jury or inquest for his neighbors, constituted in the usual judicial form as if to judge an ordinary civil matter, and proceeded, in their presence, to cite individually the various phantoms and resemblances of the deceased members of the family, to show by what warrant they disputed with him and his servants the quiet possession of his property, and what defense they could plead for thus interfering with and incommoding the living. The specters of the dead, by name, and in order as summoned, appeared on their being called, and, muttering some regrets at being obliged to abandon their dwelling, departed or vanished from the astonished inquest. Judgment then went against the ghosts by default; and the trial by jury, of which we here can trace the origin, obtained a triumph unknown to any of the great writers who have made it the subject of eulogy."

Helpful Dreams. A most interesting illustration of a certain class of dreams is found in an anecdote published by the distinguished author of the Waverley novels, and considered authentic:—Mr. R., of Bowland, a gentleman of landed property in the vale of Gala, was prosecuted for a very considerable sum, the accumulated arrears of teind (or tithe), for which he was said to be indebted to a noble family, the titulars (lay impropriations of the tithes). Mr. R. was strongly impressed with the belief that his father had, by a form of process peculiar to the law of Scotland, purchased these lands from the titular, and therefore that the presented prosecution was groundless. After an industrious search among his father's papers, an investigation of the public records, and a careful inquiry among all persons who had transacted law business for his father, no evidence could be recovered to support his defense. The period was now near at hand when he conceived the loss of his suit to be inevitable, and was about to make the best bargain he could in the way of compromise. He went to bed with this resolution, and, with all the circumstances of the case floating upon his mind, had a dream to the following purpose:

His father, who had been dead many years, appeared to him, and asked him why he was disturbed in his mind. Mr. R. thought that he informed his father, and added he had a strong consciousness that it was not due, though he was unable to recover any evidence in support of his belief. "You are right, my son," replied the paternal shade, "I did acquire right to these teinds, for payment of which you are now prosecuted. The papers relating to the transaction are in the hands of Mr. ——, an attorney who is now retired from professional business, and resides at Inveresk, near Edinburgh. It is very possible," pursued the vision, "(as I never employed him but on that occasion) that Mr. —— may have forgotten a matter which is now of a very old date; but you may recall it to his recollection by this token, that when I came to pay his account there was difficulty in getting change for a Portugal piece of gold, and that we were forced to drink out the balance at a tavern." Mr. R. awakened in the morning with all the words of the vision imprinted on his mind, and thought it worth while to ride to Inveresk instead of going to Edinburgh. When he came there, he waited on the attorney mentioned in the dream, and, without saying anything of the vision, he inquired of the old man whether he remembered having conducted such a matter for his deceased father. The old gentleman could not at first bring the circumstances to his recollection; but on mention of the Portugal piece of gold, the whole returned to his memory. He made immediate search for the papers and found them, so that Mr. R. carried to Edinburgh the documents necessary to gain the cause which he was on the verge of losing.

There is every reason to believe that this very interesting above-mentioned dream is referable to the principle that the gentleman had heard the circum-

stances from his father, but had entirely forgotten them, until the frequent and intense application of his mind to the subject with which they were connected at length gave rise to a train of associations which recalled them in the dream.

To the same principle is referable the following anecdote, which is received as entirely authentic:

A gentleman of the law in Edinburgh had mislaid an important paper relating to some affairs on which a public meeting was soon to be held. He had been making most anxious search for it for many days, but the evening of the day preceding that on which the meeting was to be held had arrived without his being able to discover it. He went to bed under great anxiety and disappointment, and dreamed that the paper was in a box appropriated to the papers of a particular family, with which it was in no way connected. It was accordingly found there in the morning.—Dr. Abercrombie in "Intellectual Powers."

Evidence Concerning Unknown Powers. The following is an excerpt from the opinion of the United States circuit court of appeals for the fifth circuit in Post v. United States, 70 L.R.A. 989, 67 C. C. A. 569, 135 Fed. 11, in a "Christian Science" case. The trial judge had instructed the jury to disregard certain evidence because it was contrary to the "well-established laws of nature." Judge Shelby said:—

"When a question of fact is tested, although it may involve the existence of a power not generally recognized, evidence bearing on the question must be considered as in other cases. Science has not yet drawn, and probably never will draw, a continuous and permanent line between the possible and impossible, the knowable and unknowable. Such line may appear to be drawn in one decade, but it is removed in the next, and encroaches on what was the domain of the impossible and unknowable. Advance in the use of electricity, and experiments in telepathy, hypnotism, and clairvoyance warn us against dogmatism. The experience of the judiciary, as shown by history, should teach tolerance and humility, when we recall that the bench once accounted for familiar physical and mental conditions by witchcraft, and that, too, at the expense of the lives of innocent men and women. In that day, it was said from the bench that to deny the existence of witchcraft was to deny the Christian religion. Juries would have done better. Then and now questions of fact were best tried by jury."

A Question for the Jury. "In this case, says Powell, J., in Grimsley v. Atlantic Coast Line R. Co. 1 Ga. App. 558, 57 S. E. 943, "we are not called upon for an exposition of the law of the carrier's duty in regard to the passenger's safety, nor for an exegesis of the terms by which such duty is defined; but the question is solely as to the applicability of the recognized rule to the stated facts. Both parties cite and rely upon the Boyle Case, 115 Ga. 836, 42 S. E. 242, 59 L.R.A. 104. The defendant in error says that the facts alleged in the petition do not show a breach of duty; the plaintiff in error says they do. The nature of the jurisdiction conferred upon this court by the Constitution compels us to assume towards such questions very much the attitude of the landlord in one of George Eliot's stories: '"But," said the farrier, "I'm afraid o' neither man nor ghost, and I'm ready to lay a fair bet,—I arn't a turn-tail cur." "Ay, but there's this in it, Dowlas," said the landlord, speaking in a tone of much candor and tolerance, "there's folks i' my opinion, they can't see ghos'es, not if they stood as plain as a pikestaff before 'em. And there's reason i' that. For there's my wife, now, can't smell, not if she'd the strongest o' cheese under her nose. I never see'd a ghost myself; but then I says to myself, Very like I haven't got the smell for 'em. I mean, putting a ghost for a smell, or else contrairiways. And so I'm for holding with both sides; for, as I say, the truth lies between 'em. And if Dowlas was to go on stand and say he'd never seen a wink o' Cliff's Holiday all the night through, I'd back him; and if anybody said as Cliff's Holiday was certain sure for all that, I'd back him too. For the smell's what I go by."' We quote this as illustrative of our attitude to such matters, even though it be

upon pain of having some of the profession take the same view as did the uncomprehending farrier; for, as the story goes: '"Tut, tut," he said, setting down his glass with refreshed irritation, "what's the smell got to do with it?"' Of course, there is a point at which the facts are no longer issuable, but till that point is reached, if the jury says, 'ghost,' we say, 'ghost;' if the jury says, 'negligence,' we say 'negligence,' and *vice versa*."

Transfixing Trance. Rigid as a mummy, Louis A. Albright, a visitor from Canton, Ohio, was found gazing into a necktie shop at Fourth and Spring streets by the police early one morning. He was apparently held in a hypnotic trance by an electric globe revolving before a reflector of many colors and many facets. It was only after hours of work by surgeons at the Receiving Hospital, that he was restored to full consciousness.

Walking his beat Patrolman Watson saw the man gazing intently into the window. Returning that way half an hour later, Mr. Albright held the same position. Telling himself that the stranger was a very deliberate window shopper, the patrolman passed on. But when he came by the store a third time and saw that Mr. Albright had not budged he thought it time to investigate.

"Pretty ties, sir," he suggested with due respect.

He might have been talking to a rock.

"Nice night, sir," began the patrolman once more. Again there was no response. He touched the window gazer. There was no movement. There was no scent of liquor about the man. The officer then scratched his head. The stranger was lacking in respect for the dignity of the law he represented. Patrolman Watson resolved upon desperate tactics. He stepped upon Mr. Albright's corns. Still the man remained statuesque.

Officer Watson sought an advisory council. He called the patrol. The driver and the wagon man were equally puzzled. Further, they refused to take the stranger in. He was surely disturbing their peace, but not according to Blackstone. He was resisting arrest, but only in a passive sense. He was also blockading the sidewalk, but there were no early morning wayfarers to block. It was a very puzzling case. The patrol driver hopped to his seat.

"Call the ambulance," he directed.

The ambulance was called. Mr. Albright was tipped into a stretcher and driven to the hospital.

As long as the ambulance was in sight Patrolman Watson gazed after it.

"Now, what do you think of that?" he mumbled, scratching his head again.—Los Angeles Daily Times.

A Weird Will's Result. A little over two years ago an eccentric Russian, Countess Austrigildski, died and left a bequest of $1,300 a year for life to any person who shuts himself up in a tomb at Père Lachaise for twelve months and a day. The first man to attempt this torture has become a raving lunatic. The one who undertakes this is offered lodging in a stone cell built over the Countess Austrigildski's vault, and he must never leave the abode, day or night, for a year and a day. He may not communicate with any person in the outside world save the person who brings his food morning and evening. And he may never have a light. A dismal prospect even at thought of a yearly income of $1,300.—Record, Germiston, South Africa.

No Witches Burned. It is a curious thing that people in general can never get over the delusion that people were burned for witchcraft at Salem. Every little while we see some newspaper or literary reference to the "burning of witches at Salem." Witches were hanged at Salem, but none was ever burned. By the way; a distinguished legal authority has examined the evidence used in the witchcraft cases at Salem, and declares that it was irrefragable—all of the ironclad and most conclusive sort. No jury would fail to convict to-day on such evidence as was adduced in these cases. Just the same, witchcraft was a horrible delusion.—New York Mail.

Dream Came True. Probably the only recorded instance of a dream that came true, which was authenticated by the

dreamer relating it at once to a number of persons, was that concerning the assassination of Spencer Perceval, in 1812. J. Williams Ewing at Redruth, in Cornwall, on May 3, 1812, eight days before the occurrence, dreamed three times in the same night that he saw a Mr. Perceval shot in the lobby of the House of Commons by a man in a brown coat. The impression made was so deep that he consulted his brother and other people as to the propriety of communicating with Perceval, but they dissuaded him. After the event he went up to the House of Commons and pointed out the exact spot where Bellingham stood when he fired.—London Chronicle.

Witchcraft in Italy. The trial and condemnation of six supposed witches at Sassari has once again revealed the power of superstition in Italy. In the evidence at the trial the police showed that in eight cases the accused had received large sums of money, varying from $200 to $1,000, for pretended cures effected by witchcraft, for miracles worked on the ignorant with the aid of cinematography, and for the rights to treasure supposed to be hidden in the earth.

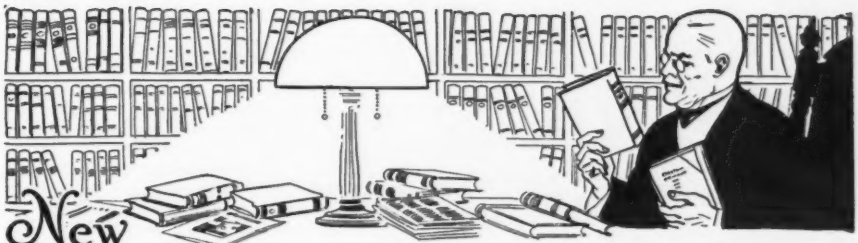
The director of the local prison, who had been suspended from duty for the escape of a noted brigand, paid a thousand francs that the brigand might be returned to prison by exorcism. A shepherd was suffering from a sore on his leg. The witch affirmed that the sore was caused by the soul of a bishop, which had taken refuge in the affected part. The cure cost him $400. A carter of Itri was fully persuaded that the world would end on December 31, 1913, and in order that he might be found on that day in good company with the prophets, paid away all his savings, $205, for the privilege.

Whilst a house was being demolished at Sassari one of the sorcerers approached two brothers who were engaged on the work and confided to them that there was a hidden treasure in the building. The two brothers immediately fought for the right to the treasure, and one was killed, the other put into prison.

At the trial many of the peasants absolutely refused to give evidence, declaring that they would be persecuted by evil spirits for the remainder of their lives.—The Times-Picayune.

Sardinia Still Tries Witches. The belief in witches which still exists in out-of-the-way parts of Italy is illustrated by a case tried in Sardinia in April, in which six old women have been brought before the judge for having obtained larger or smaller sums of money, not only from other women, but from working men and from country gentlemen. The sums they received, varying from a few francs to £40, were in return for various services, from the care of the souls of the departed and interviews with the dead to the cure of inflammation of the lungs, and lunacy, the lengthening of life, and protection from the supposed imminent end of the world; more often still, the money was extorted in return for indicating the spots where fabulous sums of hidden treasure were to be found.

One old lady, Rosa Aru, called "The Saint," has more than a hundred cases against her, and the credulity of the people with regard to her passes all belief, the Standard says. During the trial Rosa Aru, seeking the crucifix which is usually to be found in the courthouse, flung herself before it and began praying at the top of her voice and at great length. She took no notice of the reproofs of the judge and refused to be silent, saying that it was of the utmost importance for her to inform of the facts of the case St. Thomas and St. Augustine, who were her best advocates and helpers. Whenever the judge asks any inconvenient questions, she replies "that I am not allowed to inform you," but the evidence against her appears to be so overwhelming that her condemnation seems certain.—N. Y. Evening Post.



New Books and Recent Articles

All the world knows me in my book.—Montaigne.

"Legal Laughs." By Gus C. Edwards (Legal Publishing Co., Clarkesville, Ga.). $2.50 delivered.

This volume may be designated a digest of legal humor. The best and latest jokes pertaining to law and lawyers are here presented, so completely indexed and classified that the attorney may turn to the "joke in point" in an instant. The collection contains about 1,000 anecdotes.

The value of such material to the lawyer or public speaker cannot be overestimated. Nothing is more convincing than an apt and striking story which is well told at the right time. The popular orator or persuasive advocate is generally the man who can embellish his logic with catchy anecdotes—who can drive home his reasoning with a pointed story,—who can by these means make his thought as vivid as though pictorially illustrated. The man who comes to another with a good story approaches him from the blind side, and influences him before he is aware.

But humor may not have any ulterior purpose. A laugh for the laugh's sake is permissible. And the man who at a banquet or informal gathering can brighten the passing moment with wit and merriment is always welcome. There is always hope for a man who can laugh, or has mastered the gentle art of making others laugh with him.

"Psychology and Mental Disease." By C. B. Burr, M. D. (F. A. Davis Co., Philadelphia). Fourth Edition.

This well-known handbook, designed for use in training schools for attendants and nurses and in medical classes, has now reached its fourth edition. The book has been very materially enlarged, especially in those portions of interest to medical men. A new section entitled, "Symbolism in Sanity and Insanity," has been added. Studies have been made of certain paranoid and hysterical states on the basis of Freud's researches. The section on "Management of Cases of Insanity from the Medical Standpoint" has been amplified.

This new edition fulfils the author's hope, expressed in an earlier edition, that the book might become increasingly useful. It contains much of interest to the general reader as well as to the student.

"The Spirit's Work." By J. H. Montgomery (Riverside Press, Brookline, Boston). $1.26 postpaid.

This is the title of a volume of verse from the pen of a busy lawyer. "They were written as events gave them utterance," states the author, "and seem to be a result flowing from the source of my being." They are a disclosure of the inner thought and real being of the writer,—of that individual self which so often remains unknown to associates and friends. Through the lines there runs a vein of spontaneity and spiritual cheer.

The poems cover a wide range of subjects, and express pleasing sentiments of home, kindred, friends, philosophy, and life.

Perhaps the best of the collection is, "A Visit to the Montgomery Farm," where the poet describes his return to the scenes of his boyhood, but

> "Strange voices answered my questions;
> Strange faces appeared at the door."

"Foreigners in Turkey: Their Juridical Status." By Philip Marshall Brown (Princeton University Press, Princeton, N. J.).

A series of diplomatic agreements and contracts, under the general name of "The Capitulations," have long restricted the right of the government of Turkey to assert jurisdiction over foreigners in civil and criminal cases. Foreign subjects in this way have enjoyed extraterritorial rights entitling them to trial by their own judges, diplomatic representatives, or consuls. This condition grew out of a belief on the part of the European powers that the Turkish government could not be relied on to do justice to alien residents. It is natural for the present government to chafe under the assumption that this necessity still exists, and to desire to free itself from the domination of the great powers. This it has sought to do by a stroke of the pen.

Turkey has formally notified the nations of the world that she has abrogated the Capitulations. The powers involved, including the United States, have refused to recognize her

right to rescind them. This diplomatic situation renders Professor Brown's work of timely interest. His volume presents the results of a special investigation into the origin of the extraterritorial rights, and sets forth in the form of a brief code the juridical rights enjoyed by foreigners in Turkey. He has also attempted to find a working hypothesis on which to base necessary readjustments.

Mr. Brown was formerly secretary and charge d'affaires of the American embassy in Constantinople, and is now assistant professor of international law and diplomacy in Princeton University. He is well qualified to discuss the particular problems growing out of the Capitulations and the unusual questions of international law involved.

"Thornton on Attorneys at Law." By Edward M. Thornton (Edward Thompson Company, Northport, L. I.) 2 vols. $12.00.

This publication represents an important addition to legal text-book literature. Its author, who unfortunately died while writing the last chapter, was an accomplished lawyer, who will long live in the pages of this extensive treatise. His style is concise and clear cut. The text is fortified with numerous citations and brief notes. The writer's chapter and section divisions bear evidence of analytical and logical arrangement.

The subjects of the attorney's privileges, exemptions, and disabilities; of privileged communications; of the relation and dealings between attorney and client; of law partnerships; of the attorney's authority, liability, compensation, lien, and punishment for misconduct, seem to be adequately and well presented.

The index is well made, and the work is preceded by a large table of cases.

New Law Books

McClain's "Cases on Bailments and Carriers." Buckram, $5.

Paine's "National Banking Laws." 7th ed. $3.50.

Chase's "Blackstone." 4th ed. 1 vol. Buckram, $6.50.

Glenn's "Creditors' Rights and Remedies." (Students' Series.) Buckram, $3.

Thayer's "Jurisdiction of Federal Courts." 2d ed. By Byron F. Babbitt. Buckram, $2.50.

Healey's "Individual Delinquency." Cloth, $5.

"Cumulative Supplement to Wigmore on Evidence." (New Volume 5.) Sheep or buckram, $6.50.

Carroll's "Kentucky Statutes." 2 vols. $15.

"Maryland Corporation Law." By George M. Brady. Buckram, $5.

"Reprint of the Session Laws, 4th Session, Montana Legislature and Session Laws of 1867 of the Territory of Montana." Law sheep, $10.

"Supplement to the New Jersey Digest." Being volume 8. 1 vol. Buckram, $7.50.

"New York State Department Official Reports." Containing decisions of the public service commissions, of the Board of claims, and of the education department, the opinions of the attorney general, and the rulings, regulations, and determinations of the various state officers, departments, boards, and commissions of the state of New York. Issued in semimonthly advance sheets. Subscription price, $3.50 a volume, with Advance Sheets, delivered. Advance Sheets, delivered, $1.25 a volume.

Bender's "Manual for New York Supervisors, County, and Town Officers." 7th ed. By Frank B. Gilbert. 1 vol. Buckram, $7.50.

Heaton's "Surrogates' Courts of New York." 2d ed. 2 vols. $15.

Hurst's "Index and Directory of Virginia Law." 1 vol. Red Morocco flexible covers, $10.

"The County Court." A book on Wisconsin Probate Law and Practice. Buckram, $4.

Gray on "Perpetuities." 3d ed. Buckram, $6.50.

"Words and Phrases." Second Series. 4 vols. Thin paper, Law Buckram, $24.

Recent Articles of Interest to Lawyers

Attorneys.

"Reorganization of the Legal Profession."—21 The Bar, 14.

"A Message to Lawyers."—21 Case and Comment, 379.

Aviation.

"Aviation and Trespass."—79 Central Law Journal, 184.

Banks.

"The Law of Banking."—31 Banking Law Journal, 695.

"Modern Banking and Trust Company Methods."—31 Banking Law Journal, 701.

"American Banking Problems and the European War."—19 Trust Companies, 169.

Bills and Notes.

"The Negotiable Instruments Law."—31 Banking Law Journal, 665.

Constitutional Law.

"The Constitutionality of the Act of Legislature Known as the Optional Charter Act."—20 Virginia Law Register, 401.

"Power of Provincial Legislatures to Enact Statutes Affecting the Rights of Nonresidents."—50 Canada Law Journal, 473.

Covenants.
"The More Common Defenses in Actions to Enforce Observance of Restrictive Covenants on the Use of Real Property."—79 Central Law Journal, 220.
Credit.
"Problems of Foreign Exchange and Financing Trade Development."—19 Trust Companies, 185.
Dower.
"Dower and the Widow's Quarantine."—21 Case and Comment, 376.
Executors and Administrators.
"In the House of Mourning."—21 Case and Comment, 361.
Fiction.
"Settled Out of Court."—21 Case and Comment, 385.
"Pseudonymous."—Scribner's Magazine, October, 1914, p. 456.
"Darius and Alexander."—Scribner's Magazine, October, 1914, p. 511.
"Wind in the Pines."—Scribner's Magazine, October, 1914, p. 531.
Foreign Countries.
"Norway and the Norwegians from an American Point of View."—Scribner's Magazine, October, 1914, p. 444.
Juvenile Courts.
"The Child's Court."—21 Case and Comment, 367.
Master and Servant.
"Workmen's Compensation in the British Courts."—79 Central Law Journal, 202.
Navy.
"The Fleet."—Scribner's Magazine, October, 1914, p. 481.
Negligence.
"Shock as Being Actionable in Negligence."—79 Central Law Journal, 204.
Patents.
"Interesting Features of Patent Law."—21 Case and Comment, 358.
Receivers.
"Right to Set Off Claims against the Estate in an Action Brought by a Receiver."—79 Central Law Journal, 237.
Schools.
"Chapters on the School Law of California. I. The Public School System."—2 California Law Review, 459.
South America.
"Our Opportunity to Establish Trade and Credit Relations with South America."—19 Trust Companies, 176.
Statutes.
"Amendments to the New York Code of Civil Procedure in 1914."—9 Bench and Bar, N. S., 148.
Surrogates.
"The Surrogates' Courts Act."—9 Bench and Bar, N. S., 212.
Trade.
"What has been Accomplished in Clearing the Foreign Exchange Situation."—19 Trust Companies, 174.
Trespass.
See Aviation.
War and Neutrality.
See also Banks.
"The Rules of War and Neutrality."—9 Bench and Bar, N. S., 156, 197.
"Neutral Duties."—2 California Law Review, 450.
"Armageddon—The Forging of a Great Peace."—Scribner's Magazine, October, 1914, p. 524.
Waters.
"Determination of Water Titles and the Water Commission Bill."—2 California Law Review, 435.
Wills.
"The Work of Public Guardian."—21 Case and Comment, 374.
Woman Suffrage.
"Woman's Legitimate Function as a Citizen."—21 Case and Comment, 381.
Women Lawyers.
"The Twentieth Century Portia."—21 Case and Comment, 353.
"The Prejudice against Women Lawyers: How Can It Be Overcome?"—21 Case and Comment, 371.
"The Women Lawyers' Association."—21 Case and Comment, 364.

Study of the Law

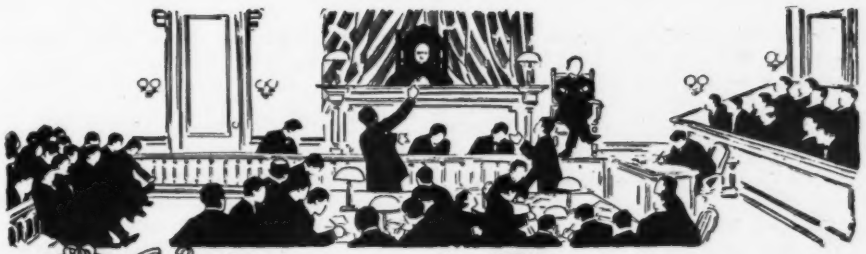
Rabbi Chonan, of Zepora, said; "The study of the law may be compared to a huge heap of dust that is to be cleared away. The foolish man says, 'It is impossible that I should be able to remove this immense heap; I will not attempt it;' but the wise man says, "'I will remove a little to-day, some to-morrow, and more the day after, and thus, in time, I shall have removed it all.'" It is the same with studying law.

In the book of Proverbs we are told that "Wisdom is too high for a fool." . . .

Rabbi Jochanan illustrates this text with an apple depending from the ceiling. "The foolish man says, 'I cannot reach the fruit, it is too high;' but the wise man says, 'It may be readily obtained by placing one step upon another until thy arm is brought within reach of it.' The foolish man says, 'Only a wise man can study the entire law;' but the wise man replies, 'It is not incumbent on thee to acquire the whole.'"—Hon. U. M. Rose.

Mr. Justice McReynolds

Who, as the successor to the late Justice Lurton, took his seat on the bench of the United States Supreme Court on October 12. A sketch of Justice McReynolds appeared in the May, 1913, Case and Comment.



Judges and Lawyers

A Record of Bench and Bar

Walton J. Wood

Public Defender of Los Angeles County, California.

WALTON J. WOOD has the distinction of being the first public defender of Los Angeles county, to which position he was appointed January 6 of this year. From among fifty candidates who took civil-service examination for the office, Mr. Wood ranked highest, thus securing the appointment. The work of the public defender is no longer regarded in Los Angeles as an experiment. The office is an established success, and the movement is spreading across the continent. In explaining the work of his office, Mr. Wood has said: "It has occurred to me that a possible objection might be raised by some who might think that the public defender is a counterpart of the district attorney and would naturally endeavor to undo the work of the prosecuting officer. This, however, is far from the true conception of the office. In considering this matter great emphasis should be placed upon the fact that the public defender is not the reverse of the district attorney. It is not his duty to undermine the work of the prosecutor, nor to secure acquittals regardless of the merits of the case. It is his duty, however, to bring out the facts and the law in favor of the accused. Wherever the defendant is not able to employ his own attorney, the office of the public defender is the proper means of investigating the facts in his behalf and presenting them to the court. In Los Angeles the district attorney and the public de-

WALTON J. WOOD

fender are working harmoniously together. We are doing what the district attorney tried to do in many cases, but which, on account of conditions which could not be overcome, he was unable to do. We are daily advising the accused of their rights. We are informing them of the law covering the crime of which they may be charged. We are listening to their side of the story, and are bringing out whatever points there may be in favor of the defendants, at the same time doing nothing to hamper or delay the administration of justice. Many of our clients come by recommendation from the office of the district attorney, others come from officials at the county jail and others at the request of the judges."

As an example of the co-operation of the district attorney and the public defender, Mr. Wood cites the case of a man who is now awaiting trial on a charge of murder, and whose only possible defense is insanity. He observes: "It has been the universal custom in cases of this kind for each side to employ alienists, and it is well known that in very many cases alienists are employed who are known to be prone to favor the side that employs them. The district attorney and the public defender in this case have united in asking the court to appoint three able alienists who will serve as the only expert witnesses in the case. This marks a new step in the administration of justice, at least in this part of the country. We are taking the best method of arriving at the truth."

Judge Willis, one of the ablest judges of the criminal courts in California, states that the office of public defender of Los Angeles county "has been a great saving to the county in the matter of expense." This statement, although very remarkable, is undoubtedly true in view of the amount of work accomplished. A number of cases have been dismissed by talking frankly with the district attorney and showing him that a trial would result in acquittal. He has, in such cases, dismissed the prosecution. In other cases delays have been avoided by having attorneys who are familiar with certain criminal procedure in court at all times, thus being able to despatch business much more rapidly. There are now in the office of the public defender, four lawyers and two assistants.

It is sometimes contended that the district attorney himself can safeguard the interests of those who are unable to employ counsel. Doubtless more care is taken by prosecuting officers in cases against the indigent than in other cases, and very properly so. But, both in theory and in practice, it is impossible for the prosecutor to represent both sides. Under the law it is his duty to prosecute; no provision is made for him to defend.

Of hardly less importance than the criminal side of the work of the public defender is the civil side. Again quoting Mr. Wood: "The number of calls for our assistance in civil matters has certainly been surprising. An average of nearly twenty cases a day has come to the office since its creation. While the charter provides that we shall take claims of not over $100 for poor people, we find that we are asked for advice on nearly every branch of the law. Domestic troubles seem to cause a great deal of unhappiness, and many people who are in domestic difficulties are entirely unable to gain the advice of someone conversant with the law. While the law does not prescribe that we shall do anything whatever with these matters, we find that, with the exercise of discretion, we can give advice in many cases where the worthy poor are entitled to it. In fact, our office has been turned into what might be called a legal county hospital. We are trying to remember that we are working for the less fortunate of humanity. Our office tries to look at both sides in each claim.

Prior to Mr. Wood's appointment to the office of public defender, he was deputy city attorney of the city of Los Angeles. He is a native Californian—having been born on the 5th of August, 1878, at Oroville. He studied law at Stanford University, from which institution he graduated in 1901. He practised law in the Philippine Islands for five years, and for the last seven years has been engaged in the work of his profession in Los Angeles.

Lionel Adams

Famous New Orleans Lawyer

LIONEL ADAMS, for more than a quarter of a century regarded as one of the South's greatest criminal lawyers, died recently in New Orleans.

"During an incumbency of four years as district attorney and two years as assistant district attorney of Orleans parish," states the Times - Picayune, "he prosecuted criminals with a relentlessness and courage that won him the commendation of the law-abiding public, but his great reputation as a practitioner in criminal courts came from his wonderfully successful work as a lawyer for the defense. Except for the period of six years during which he was a public prosecutor, there have been few criminal cases of note in Louisiana since 1880 in which he was not engaged as principal counsel for the defense. His reputation was not confined to the borders of Louisiana, for he was sought by the defense in noted criminal trials in adjoining states, and even in New York and Chicago.

LIONEL ADAMS

"He studied law under Judge Atocha and at Tulane University, and in 1880 was admitted to the bar by Chief Justice T. C. Manning. He was recognized as a brilliant and apt student of the law, and soon attracted attention as a practitioner.

"His first big success came to him just a few months after his admission to the bar, when he was engaged in the defense of J. C. Wright, after the latter had been convicted of a felony and had been denied a new trial by the Louisiana state supreme court. Mr. Adams went into this celebrated case when it appeared almost hopeless for the defendant. He succeeded in having the supreme court grant an extraordinary motion for rehearing of the appeal before that tribunal, and his argument of the contention that Wright had been the victim of a conspiracy and 'frame-up' was so compelling that the supreme court reversed itself and sent the case back to the lower court for a retrial. At the second trial Wright was acquitted, and indictments were later brought against three alleged conspirators, charging them with perjury and conspiracy. This trio fled the state, and it is said that neither of them ever returned.

"During his first year at the bar Mr. Adams also won a notable victory in the United States circuit court in the defense of a ship's crew charged with mutiny on the high seas. He was requested by Judge Wood to defend the accused members of the ship's crew.

"In 1884 Mr. Adams was elected district attorney of Orleans parish, serving four years. Again from 1892 to 1894 he

was engaged in prosecuting criminals when he was appointed chief assistant district attorney under Charles A. Butler. Mr. Adams obtained more than 97 per cent of convictions in the cases that he brought to trial as district attorney and assistant district attorney.

"One of his intimate friends and associates observed that Mr. Adams 'never played lottery with a man's life;' that if he had the slightest doubt of the guilt of the accused, he invariably gave the defendant the benefit of such doubt, and either entered a *nolle prosequi* before the trial, or informed the court that he could not conscientiously ask for a conviction.

"Five years ago Mr. Adams entered into a partnership with Joseph E. Generelly, a former assistant district attorney. After this partnership was formed the defense of one of the most interesting criminal cases in Mr. Adams' long and successful career was given into the hands of this firm, that of Annie Crawford, charged with the murder of her sister by the administration of poison. This case attracted attention throughout the United States. The woman was acquitted.

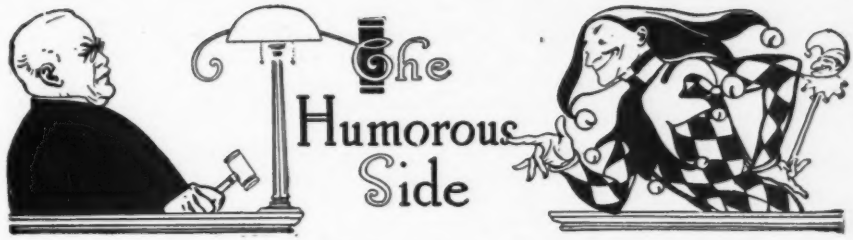
"Perhaps the most notable of all the cases in which Mr. Adams was engaged was that of the Italian Mafia members who were tried for the assassination of Chief of Police Hennessy. Mr. Adams was of counsel for the defense in this celebrated case. The jury failed to agree on the guilt or innocence of some of the defendants, and acquitted others. The wildest excitement prevailed throughout the city, following the conclusion of the case, and the following day the defendants, with several Italians suspected of connection with the Mafia, were taken from the Parish Prison and lynched. All told eleven Italians were put to death.

"In the Mafia case the selection of a jury required sixteen days, and twenty-seven days were spent in the hearing of testimony and argument. There was a total of 123 witnesses for the state and defense. It is said that in this case Mr. Adams took the first notes on evidence that he had taken in his long career as an attorney. These notes, however, were exceedingly brief, not more than one line of writing being devoted to any witness. Mr. Adams used these brief notes in direct examination, cross-examination, and in summing up for the jury.

"Sarcasm was one of the strongest weapons of Mr. Adams in court, and many a time one of his biting remarks has so gripped the jurors that, as he intended, it would prove the deciding feature of the case. Every case that he ever conducted was a psychological study for him, and he used his different weapons of law citations, witness examination, and sarcasm, much as a general employs his infantry, cavalry, and artillery against the enemy. He was eternally striking for the vulnerable points in the enemy's battle line, and sarcasm always was the heavy artillery that he employed to batter down a fortress of facts otherwise impregnable.

"Mr. Adams displayed some rather remarkable peculiarities in the conduct of his cases. For one thing, it is said, he was opposed to a man with a full beard serving as a juror in murder cases. He never explained to his intimates his reason for his unalterable opposition to bearded men on jury charged with the trial of a capital case. Another peculiarity was his opposition to "teetotalers" on a jury. It is said that he never showed a preference for men who drink to excess for jury service, but had often declared that he thought the moderate drinker was more likely to show broad mindedness."

Dominick O'Malley, who was associated as a detective with Mr. Adams in several noted cases, said of him: "Mr. Adams had one of the most remarkable analytical minds that it has ever been my pleasure to know, . . . and his knowledge of law and court procedure, combined with his wonderful memory and natural shrewdness, made him easily one of the very greatest of criminal defense lawyers in the entire United States."



He who is without folly is not so wise as he thinks.—La Rochefoucauld.

Was It a Mistake? "While I have heard of a great many typographical breaks in my time," said Henry Watterson, "about the oddest and most humorous transposition of types that ever came to my observation was that in a New York paper some years ago. The paper used to print the shipping news on the same page with the obituaries. Imagine the glee with which its readers found the captions changed one morning, a long list of respectable names being set forth under the marine head: 'Passed Through Hell Gate Yesterday.'"—New York Sun.

Solomon Modernized. A Georgia magistrate was perplexed by the conflicting claims of two negro women for a baby, each contending that she was the mother of it. The judge remembered Solomon, and, drawing a bowie knife from his boot, declared that he would give half to each. The women were shocked, but had no doubt of the authority and purpose of the judge to make the proposed compromise. "Don't do that, boss," they both screamed, in unison. "You can keep it yourself."

Crafty Burglar. The story is told of a college professor who was noted for his concentration of mind.

The professor was returning home one night from a scientific meeting, still pondering over the subject. He had reached his room in safety when he heard a noise which seemed to come from under the bed.

"Is someone there?" he asked.

"No, professor," answered the intruder, who knew of the professor's peculiarities.

"That's strange, I was positive someone was under my bed," commented the learned man.—Judge.

Lawyer Came Out Very Well. Jones, according to Colonel Mitchell, of Binghamton, was on his last legs, so he sent for a minister, a doctor, and a lawyer, and told them that if they each put $100 in his coffin he would leave them each $5,000 in his will. He died shortly after, and the day he was buried, the minister met the doctor, and asked him if he had put his $100 in the casket.

"I did," said the doctor.

"In what form did you put yours in?"

"In five $20 gold pieces."

"Well, you'll get your $5,000."

"How did you put yours in?"

"I put in a crisp new $100 bill."

"Well you'll get your $5,000, too."

Just then they saw the lawyer across the street. They called him over and asked him in what form he put his $100 in the casket.

"I put in my check for $300 and took out the change," said the man of the law. —San Francisco Star.

No Miracle Needed. Sir Joseph Ward likes a good story, and he can also tell an amusing one. Here is a favorite of his:

A certain Maori "witch doctor" was held in great awe and reverence by the superstitious natives. This man claimed that he was by his magic enabled to walk upon the water, and one day his disciples went with him to the seashore, expecting to see him perform the miracle. When they reached the water's edge the man turned to his followers.

"Do you all really believe I can walk on the sea?" he asked in solemn tones.

"Yes, yes," they replied reverently, "we do."

"Then," said the witch doctor, as he walked coolly away, "there is no need for me to do it."—London Evening Standard.

Just What He Said. In the early days of Arizona an elderly and pompous chief justice was presiding at the trial of a celebrated murder case. An aged negro had been ruthlessly killed, and the only eyewitness to the murder was a very small negro boy. When he was called to give his testimony the lawyer for the defense objected on the ground that he was too young to know the nature of an oath, and in examining him asked:

"What would happen to you if you told a lie?"

"De debil 'ud git me," the boy replied.

"Yes, and I'd get you," sternly said the chief justice.

"Dat's jus' what I said!" answered the boy.—National Monthly.

Striking Appearance. Representative John L. Burnett, of Alabama, is the midget of the house of representatives. While he is large of girth, and has absolutely no neck at all, he is surprisingly short of stature, says the Popular Magazine.

When he first opened his law office in his home town, he was employed to defend a mountaineer charged with a petty offense. When the case was called in court the judge asked the defendant if he had a lawyer to defend him.

"Yes, your Honor, I had one, but I don't see him here this morning," said the mountaineer.

"What is his name?" asked the judge.

"I don't remember his name."

"Well, what did he look like?"

"He looked like the jack of spades."

"Mr. Sheriff," promptly ordered the judge, "call John Burnett."

Paid Up Quick. In a certain negro settlement in Louisiana there is a judge who holds court in a one-room wooden shack whose furnishings consist of a pine table, a half-dozen chairs, and a big book.

One day a negro was brought before him for being drunk.

"Well, Sam, I've got to fine you according to what the law book says," and flipping over a few pages of the big book on the table, he pointed to some figures, and continued: "There it is, $18.90. See it?"

"Yes, sir, an' here's yo' money," replied Sam, handing it out quickly, and departing with an acquaintance.

When they had passed out of the hearing of the judge the acquaintance began talking of the big fine and complained:

"Why didn't yo' argufy with the jedge an' git him to rejuce them law book figgers?"

"Law book?" replied Sam. "Why, man, that ain't no law book, that ain't nothin' but a mail order catalogue. An' I wuz glad enough ter pay him what he ast me, 'cause he only turned over as far as the baby buggies. If he'd turned over to the ottermobiles he'd sent me up fer life!"—New York Sun.

A Writer of Fiction. Irvin S. Cobb, the short-story writer, recently returned from a Western trip to learn that a dear friend had been snared in a lawsuit. He hurried down to the friend's lawyer. "I want you to call me as a character witness," said he. "Why, Jack is the dearest, kindest, most honest white man in the world. I've got to go on the stand for that boy." "Not while I'm his lawyer," said the legal sharp. "I know just what would happen. The other man's lawyer would ask your occupation. And you'd say: 'I'm a writer of fiction.' And the lawyer would get up, and stand over you, and look into the dark recesses of your soul for a time. And by and by, despairing of finding one sweet, aspiring thought in you, he would turn to the jury. And he would exchange an intelligent, libelous smile with those twelve sturdy souls. And then he would go back to his chair, and without even troubling to look in your direction he would say: 'That is quite enough, Mr. Cobb. You may stand down.'"—Argonaut.

Mild Criticism. "Was the prisoner drunk? Did he appear to have more than he could carry?" "No, sir, but he might have done better had he gone after it twice."